

# *Lex Machina*

## *Patent Litigation*

### *Damages Report*



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## Introduction

This report surveys the landscape of patent litigation damages awarded in U.S. District Court cases filed from January 1, 2000 through December 31, 2013. It analyzes these damages awards across districts, judges, parties and law firms. To gain greater insight, this report focuses primarily on compensatory damages (both reasonable royalties and lost profits), enhanced damages, and awards of attorneys' fees.

The last few years have seen some of the largest awards in patent litigation history - awards that have captured headlines and brought patent damages into mainstream public debate. This report seeks to inform that debate and provide patent litigators with information they can use to set litigation strategies, develop case tactics, and produce results.

## Executive Summary

### *Total Cases*

Damages for patent infringement in U.S. District Court cases are awarded infrequently. Out of 36,629 patent cases filed and terminated from 2000 through 2013, only 708 cases (1.9%) involved compensatory damages awards.

### *Total and Median Awards*

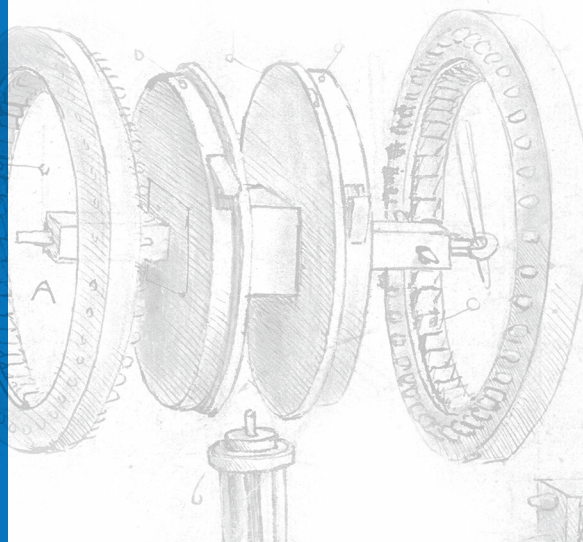
While relatively few patent cases involve damages awards, total awards made in these cases involve significant dollar amounts. Over \$15 billion in damages, fees, costs and interest have been awarded over the past 14 years. This total includes over \$13 billion in compensatory damages, almost \$1 billion in enhanced damages and over \$200 million in attorneys' fees.

Total and median damages awards have been increasing during this period, though not at steady rates. When total damages are viewed on a percentage basis, the portion attributable to reasonable royalties generally exceeds the portion attributable to lost profits.

The percentile plots show how, for reasonable royalties and lost profits awards (and compensatory damages as whole), damages drop off rapidly after the top awards: while each has a maximum over \$1 billion, 90% of those awards are under approximately \$50 million, 75% under approximately \$10 million, and half under approximately \$2 million. Enhanced damages (maximum of \$152 million, 90% under \$15.3 million, 75% under \$2.3 million, and half under \$475,000) and awards of attorneys' fees (maximum of \$11.4 million, 90% under \$2 million, 75% under \$410,000 and half under \$43,000) followed a similar distribution.

### *Largest Awards*

The largest damages awards by type show significant variability. Three cases involving awards of \$1 billion or more (*Centocor v. Abbott Laboratories*, *Carnegie Mellon University v. Marvel*, *Monsanto v. DuPont*) top the list of the 10 largest compensatory damages awards, while the remaining seven cases involve awards ranging from \$328 million to \$482 million. Below these "big-three" \$1 billion cases, top reasonable royalties damages awards range from \$156



million to \$482 million, while top lost profits awards range from \$57 million to \$248 million. Most of these largest awards (8/10 compensatory, 7/10 reasonable royalties, 8/10 lost profits) occurred in the past five years (2009-2013), evidencing the upward trend in the size of awards.

Top enhanced damages awards range from \$25 million to \$152 million. Top attorneys' fees awards range from \$5.6 million to \$11.4 million.

Comparing total and median compensatory damages awards to total terminated cases also shows an overall upward trend, especially since 2008. The upward trend for total enhanced damages tracks the upward trend in terminated cases more closely than any other damages type. Total attorneys' fees awards have been somewhat trending downward since 2009.

### *District Courts*

No surprise here for patent litigators: Cases filed in the Eastern District of Texas have generated the most awards of compensatory damages (84 cases), total compensatory damages (over \$5 billion of \$13 billion national total, or 38%), total reasonable royalties damages (\$2.9 billion of \$8 billion national total, or 36%), total lost profits damages (\$1.4 billion of \$2.7 billion national total, or 52%) and total enhanced damages (\$232 million of \$989 million national total, or 23%) than cases filed in any other district over the past 14 years.

Districts with far fewer total patent cases, however, top all lists of median damages awards:

#### Median Compensatory Damages

District of Kansas - \$34.8 million (2 cases)

#### Median Reasonable Royalties Damages

Western District of Pennsylvania - \$586 million (2 cases)

#### Median Lost Profits Damages

Western District of Wisconsin - \$38 million (2 cases)

#### Median Enhanced Damages

Western District of Michigan - \$76.1 million (2 cases)

Top attorneys' fees awards by district also involve districts other than the Eastern District of Texas. The Southern District of New York tops the list of total awards at \$34.4 million (14 cases), while the Western District of Pennsylvania tops the list of median awards at \$4.7 million (2 cases).

### *Judges*

Four of the seven judges who have awarded the most total compensatory damages are from the Eastern District of Texas: Judges Michael Schneider (\$2.3 billion/9 cases), T. John Ward (\$1 billion/19 cases), Leonard Davis (\$956 million/18 cases) and James Gilstrap (\$609 million/15 cases).

The same four Eastern District of Texas judges also appear on the list of top seven total reasonable royalties damages awarded, while Judge Schneider also tops the list of total lost profits damages awarded.

Judges on the list of top median compensatory damages awards range from Judge Marilyn Huff from the Southern District of California (\$188 million/2 cases) to Judge Edward Chen from the Northern District of California (\$57 million/3 cases). Judge E. Richard Webber from the Eastern District of Missouri tops the list of median reasonable royalties damages awards (\$500 million/2 cases), while Judge Schneider makes another appearance in a top spot, this time for median lost profit damages awards (\$589 million/2 cases).

Judges awarding the most total enhanced damages awards range from Judge Robert Jonker of the Western District of Michigan (\$152 million/1 case) to Judge Dolly Gee of the Central District of California (\$58 million/1 case). Top spots for awards of median enhanced damages range from Judge Kent Jordan of the District of Delaware (\$73 million/2 cases) to Judge Garrett Brown of the District of New Jersey (\$7.4 million/2 cases).

Judge Denise Cole of the Southern District of New York awarded the most total attorneys' fees (\$16.8 million/3 cases), while Judge Mariana Pfaeizer of the Central District of California topped the list of the largest median attorneys' fees awards (\$6.9 million/2 cases).

### *Parties*

Calculating compensatory damages won per terminated case identifies the top parties (with five or more terminated cases) that show a sustained ability to win patent damages awards. Centocor tops the list at \$278 million per case (6 cases). New York University (NYU) is second at \$209 million per case (8 cases). The remaining eight parties in the top 10 won between \$13.6 million and \$94 million per case.

Monsanto has the most cases with compensatory damages awards won, an amazing 71, with a total of \$1.02 billion and median of \$127,500. Parties with the next most total wins are all in the single digits: Ovidian and Phillips each won six cases, ArrivalStar and Directed Electronics each won five, East-West Trading won four and seven parties each won three.

Centocor and NYU top the list of parties with the most compensatory damages won, with \$1.6 billion each. Carnegie Mellon University and Monsanto both also won more than \$1 billion in compensatory damages. All top 20 parties with the most compensatory damages won received awards of \$128 million or more.

Inventor Bruce N. Saffran M.D., Ph.D., joins Carnegie Mellon, Monsanto, Centocor and NYU in the top five of reasonable royalties damages won, all above \$500 million.

The list of parties with the most lost profits damages won is also lead by Centocor and NYU, both with awards greater than \$1 billion. Versta Software, General Electric, Bard Peripheral Vascular and Warsaw Orthopedic all won lost profits awards of between \$100 million and \$250 million.

Stryker Corporation (\$152 million), Advanced Medical Optics (\$142 million), U.S. Phillips (\$89.1 million), Muniauction (\$76.9 million), and Zenith (\$50.8 million) top the list of parties with the most enhanced damages won.

Parties with the most attorneys' fees won include Takeda Chemical (\$16.8 million), University of Pittsburgh (\$9.2 million), Stryker Corporation (\$8 million) and 17 more parties with over \$3 million.

The roster of parties with the most cases lost and largest totals of different damages types lost includes both well-known and more obscure companies and inventors.



Microsoft has six cases with compensatory damages awards lost, for a total of \$857 million and median of \$110 million. Abbott Laboratories, Cordis and Dell each lost four cases and Apple, Arthrex, Cisco and Hyundai each lost three.

Abbott Laboratories, Marvell Semiconductor and DuPont lead the list of parties with the most compensatory damages lost, each with more than \$1 billion. Twenty parties have lost more than \$112 million in compensatory damages awards.

Marvell Semiconductor and DuPont also top the list of reasonable royalties damages lost, again more than \$1 billion each. Twenty parties have lost more than \$76 million in reasonable royalties damages awards.

Abbott Laboratories also leads the list of parties with lost profits damages lost. Its \$1.17 billion total towers above SAP America at \$248 million, Mitsubishi Heavy Industries at \$166 million, W.L. Gore at \$102 million and Nuvasive at \$101 million. Twenty parties have lost more than \$20 million in lost profits damages award.

Zimmer (\$152 million) and Alcon Manufacturing (\$142 million) have the most enhanced damages lost and the only awards above \$100 million. Twenty parties have lost more than \$12 million in enhanced damages awards.

Parties with the most attorneys' fees lost are led by Mylan Pharmaceuticals, with \$11.4 million. Twenty parties have lost more than \$3.7 million in attorneys' fees awards.

### *Law Firms*

Just as with parties, calculating compensatory damages won per terminated case identifies the top law firms (with five or more terminated cases) with a sustained ability to win patent damages awards. Three firms have won more than \$60 million per case: Caldwell Cassady & Curry tops the list at \$80.8 million per case (7 cases), followed by Stokes Roberts & Wagner at \$73.6 million (6 cases) and Haar & Woods at \$66.6 million per case (15 cases). The remaining law firms in the top 10 won between \$20 million and \$38 million per case.

Husch Blackwell has 45 cases with compensatory damages awards won, with a total of \$1.09 billion and median of \$183,639. Law firms with the next most total wins are Thompson Coburn (30 cases, \$23.1 million total, \$155,170 median), McKool Smith (23 cases, \$2.04 billion total, \$19 million median), Fish & Richardson (22 cases, \$162.3 million total, \$2.9 million median) and Frilot (19 cases, \$11.1 million total, \$200,000 median).

McKool Smith tops the list of law firms with the most compensatory damages won, with \$2 billion in 23 cases. Five other firms won more than \$1.6 billion in compensatory damages: Sayles Werbner (\$1.736 billion), Woodcock Washburn (\$1.695 billion), Beck Redden & Secrest (\$1.691 billion), Akin Gump (\$1.674 billion) and Millberg Gordon Stewart (\$1.672 billion).

Twenty-one law firms have total reasonable royalties damages won of more than \$500 million, led by McKool Smith with \$1.388 billion.

Twenty-five law firms have total lost profits damages won of more than \$102 million, led by Woodcock Washburn with \$1.187 billion.

Twenty law firms have total enhanced damages won of more than \$55 million, led by McAndrews, Held & Malloy and Miller Johnson with \$152 million each.

Twenty-two law firms have total attorneys' fees won of more than \$5.4 million, led by Edwards Wildman with \$26 million.

## Data Included In, and Excluded From, This Report

Lex Machina's U.S. District Court data includes all patent cases filed beginning on January 1, 2000.

This report analyzes both total (cumulative) and median<sup>1</sup> damages awarded on, or prior to, December 31, 2013, in cases filed beginning on January 1, 2000. It's important to note that it often takes two years or more after the date of filing for a case to generate a damages award.

Because cases filed prior to January 1, 2000, are not included in this report, neither are their damages awards, even if such awards were made on or after January 1, 2000.

In other words, we had to start somewhere, and whatever start date we chose would necessarily result in incomplete data about damages awards made in the years immediately following the start date. So we assume that, in the period 2000-2002, courts made damages awards that are not contained in the data presented in this report.

### Data Included

- Compensatory Damages
  - Compensatory damages are awarded to compensate the patentee - to place him in the position he would be in had the infringement not occurred.
  - Compensatory damages are sub-coded as reasonable royalties, lost profits, or compensatory lump.
    - Reasonable Royalties: The statute governing damages for patent infringement specifies that the patentee shall receive "in no event less than a reasonable royalty for the use made of the invention by the infringer."<sup>2</sup>
    - Lost Profits: A patentee may also obtain as damages the profits from sales he would have made absent infringement if he can meet the higher burden of proof defined as the *Panduit* factors: (1) demand for the patented product, (2) absence of acceptable noninfringing substitutes, (3) his manufacturing and marketing capability to exploit the demand, and (4) the amount of profit he would have made.<sup>3</sup>
    - Compensatory Lump: Where a damages award is clearly compensatory but the specific sub-type (reasonable royalties or lost profits) is not specified or the apportionment of the award between sub-types is not specified, we have coded the award as a compensatory lump.

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<sup>1</sup> To provide data useful to attorneys, parties and others forming an expectation, median graphs in this report exclude entities where the median is based on fewer than two cases. For example, districts with fewer than two cases are excluded from the median graphs in the District Courts section; judges with fewer than two cases are excluded from the median graphs in the Judges section.

<sup>2</sup> 35 U.S.C. § 284

<sup>3</sup> *Panduit Corp. v. Stalin Bros. Fibre Works, Inc.*, 575 F.2d 1152, 1156 (6th Cir. 1978).

- **Enhanced Damages**
  - Awarded for willful patent infringement, where the judge has discretion to “increase the damages up to three times the amount found or assessed.”<sup>4</sup>
  - Calculation of enhanced damages is exclusive to the underlying compensatory damages. For example, a judge awards \$1 million in compensatory damages, plus an additional \$2 million in enhanced damages.
- **Attorneys’ Fees**
  - In exceptional cases, a judge has discretion to award as damages to the prevailing party the recovery of reasonable attorneys’ fees.<sup>5</sup>
  - All prevailing-party fee awards are included, regardless of who won the case (patent rights holder or accused infringer).
  - Sanctions under F.R.C.P. Rules 11 or 37 are *not* included because the standard for sanctions under those rules differ from the standard for awards of attorneys’ fees under U.S.C. § 285.
- **Default Judgments**
  - When a party fails to appear, or fails to respond to a dispositive motion, the relief requested in the complaint may be granted and result in damages.
- **Consent Judgments**
  - A consent judgment occurs when the parties agree to have the court enter a judgment against one party. Because consent judgments are legally enforceable judgments and often occur late in the litigation, they are included to provide more complete data.

### *Data Excluded*

To more accurately quantify the economics of damages awards in the U.S. District Courts, this report excludes:

- Cases awarding only equitable relief (e.g. an injunction)
- Appeals
  - Although we hope to include Federal Circuit data in the future, this report is limited to the actions of the district courts to best help readers understand the actual (rather than the legally proper) behavior of those courts. Therefore, this report does not contain data on whether or not damages awarded by district courts were ultimately modified (or overturned) on appeal, or on outcomes in the district courts on remand.
- Cross-Category Damages
  - A cross-category damages award is one awarded on the basis of different claim types, without apportionment of the amount among those claim types, (or where documents specifying the types/apportionment are not available). For example, the much-publicized \$290 million award in the November 2013 *Apple v. Samsung* case (N.D. Cal., 5:11-cv-01846-LHK) was not apportioned between patent infringement and trade-dress infringement; thus LMI classifies this award as cross-category.

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4 35 U.S.C. § 284

5 35 U.S.C. § 284

*A Special Note: Law Firms With Attorneys Admitted Pro Hac Vice, Especially in the District of Delaware*

Lex Machina has recently become aware of a flaw in the way that the PACER (Public Access to Court Electronic Records) service, which is the source of the raw district court data in our system, encodes data for certain *pro hac vice* attorneys (attorneys not admitted to practice in a certain jurisdiction, who are allowed to participate in a particular case).

This flaw causes some attorneys and their law firms to be omitted from PACER's counsel records for certain cases, or to be displayed with an unconventional format. This problem appears to affect only a small number of attorneys and law firms. We are working to revise our data to account for this anomaly.

Nonetheless, as the problem disproportionately affects attorneys who are members of national law firms appearing in cases in the District of Delaware, we note it here. It may impact the data contained in this report, especially the section about law firms.



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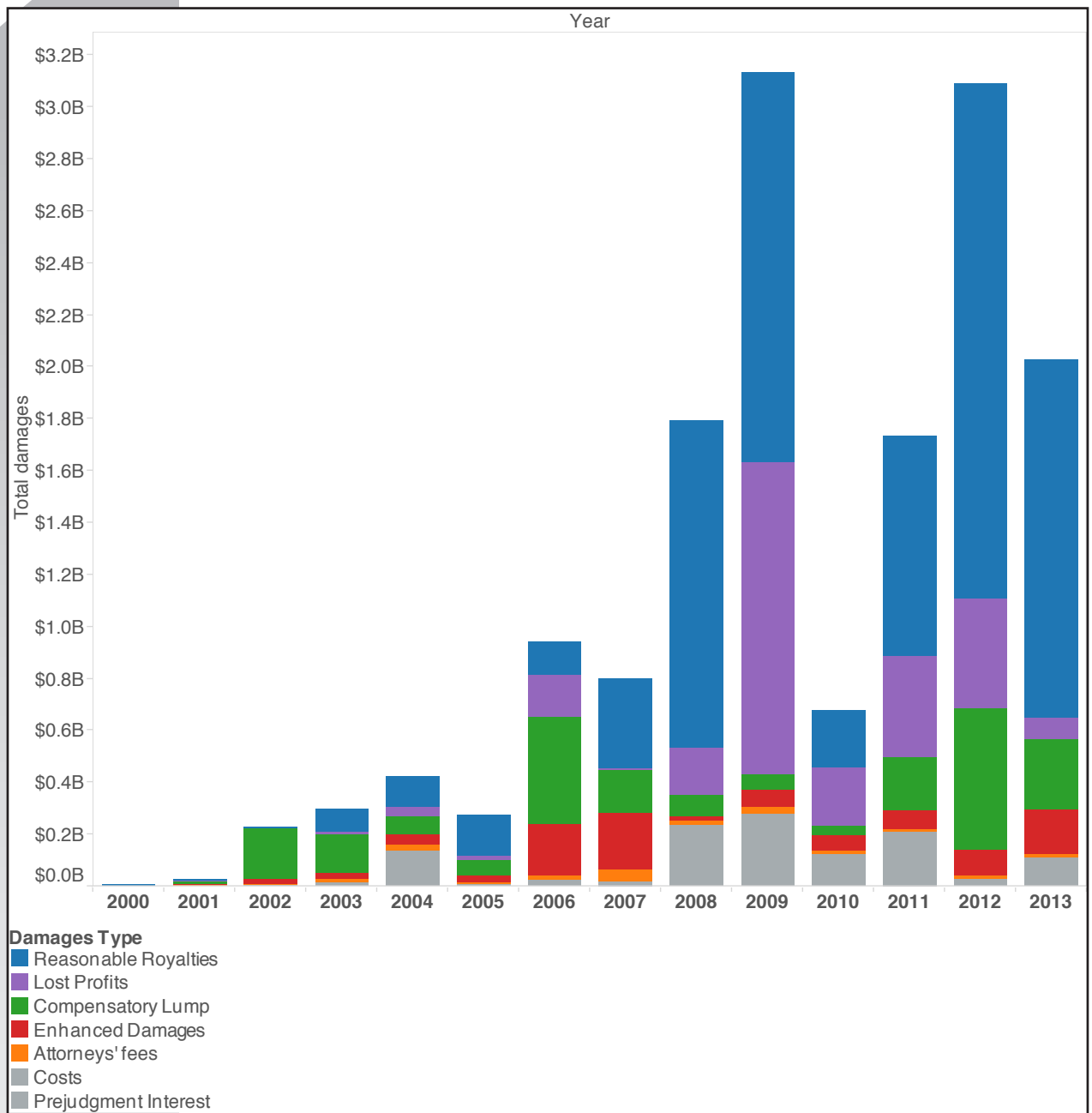
## Overview

*Figure 1: Cases*

Case Sets	Number of Cases	Percent of Cases Terminated
Cases Terminated 2000-2013	36,629	100%
Cases Terminated; Reached Merits Decision (e.g. summary judgment or trial)	5,098	13.9%
Cases Terminated; Reached Merits Decision; Damages, Attorneys' Fees and/or Costs Awarded	1,392	3.8%
Cases Terminated; Reached Merits Decision; Compensatory Damages, Enhanced Damages and/or Attorneys' Fees Awarded	883	2.4%
Cases Terminate; Reached Merits Decision; Compensatory Damages Awarded	708	1.9%

*Figure 2: Damages Totals by Type*

Compensatory Damages	
Reasonable Royalties	\$8,054,107,352
Lost Profits	\$2,737,432,416
Compensatory Lump	\$2,255,161,843
Total Compensatory Damages	\$13,046,701,611
Enhanced Damages	\$989,152,808
Attorneys' Fees	\$218,895,261
Costs	\$45,193,015
Prejudgment Interest	\$1,137,662,614
<b>Total Damages</b>	<b>\$15,437,605,309</b>

*Figure 3: Total Damages by Year*

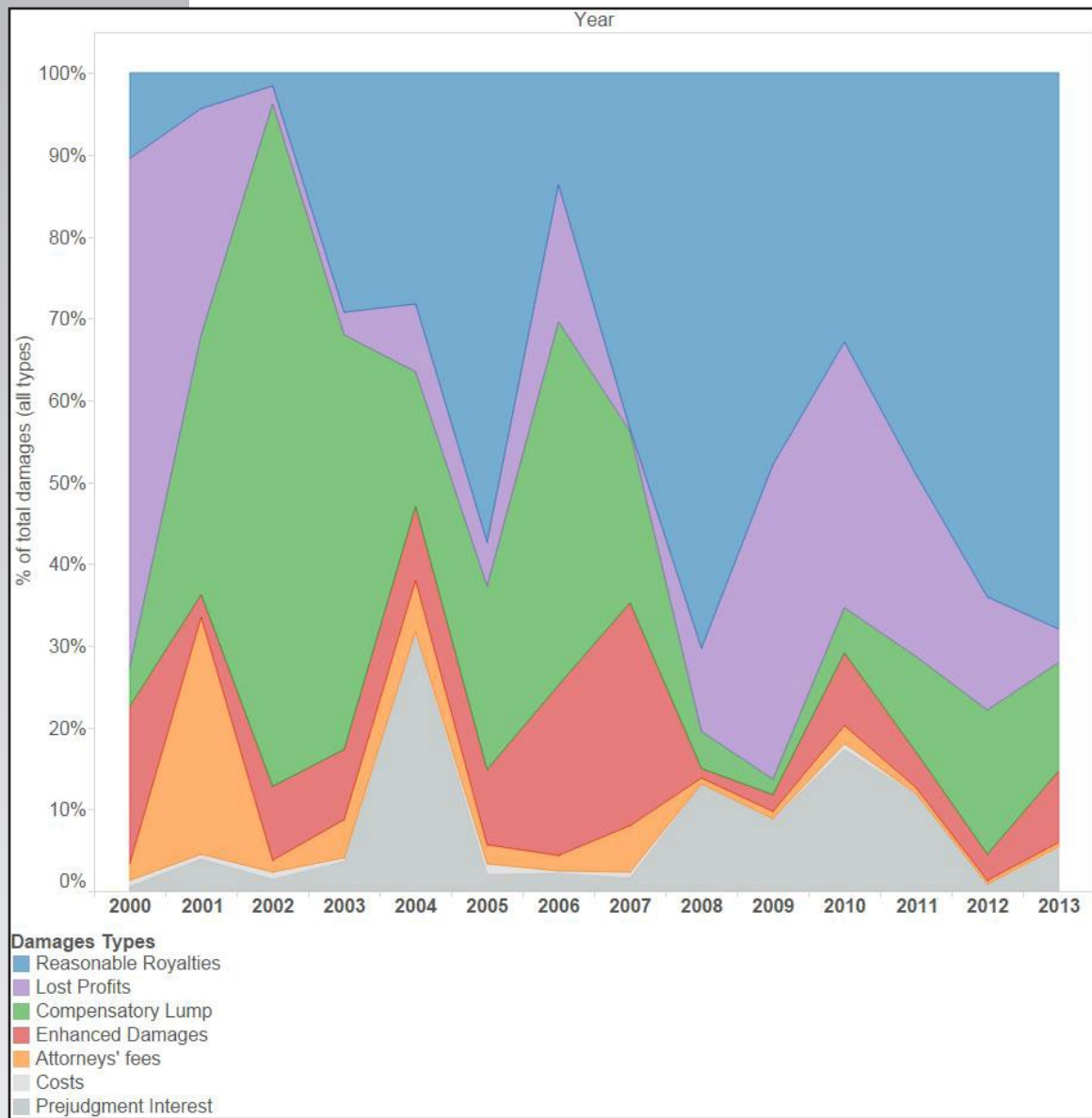
Because the dataset for this report is limited to cases filed after January 1, 2000, and most cases take more than two years from filing to reach the damages phase, damages totals shown in this report for 2000 and 2001 can be assumed to underreport the actual totals.

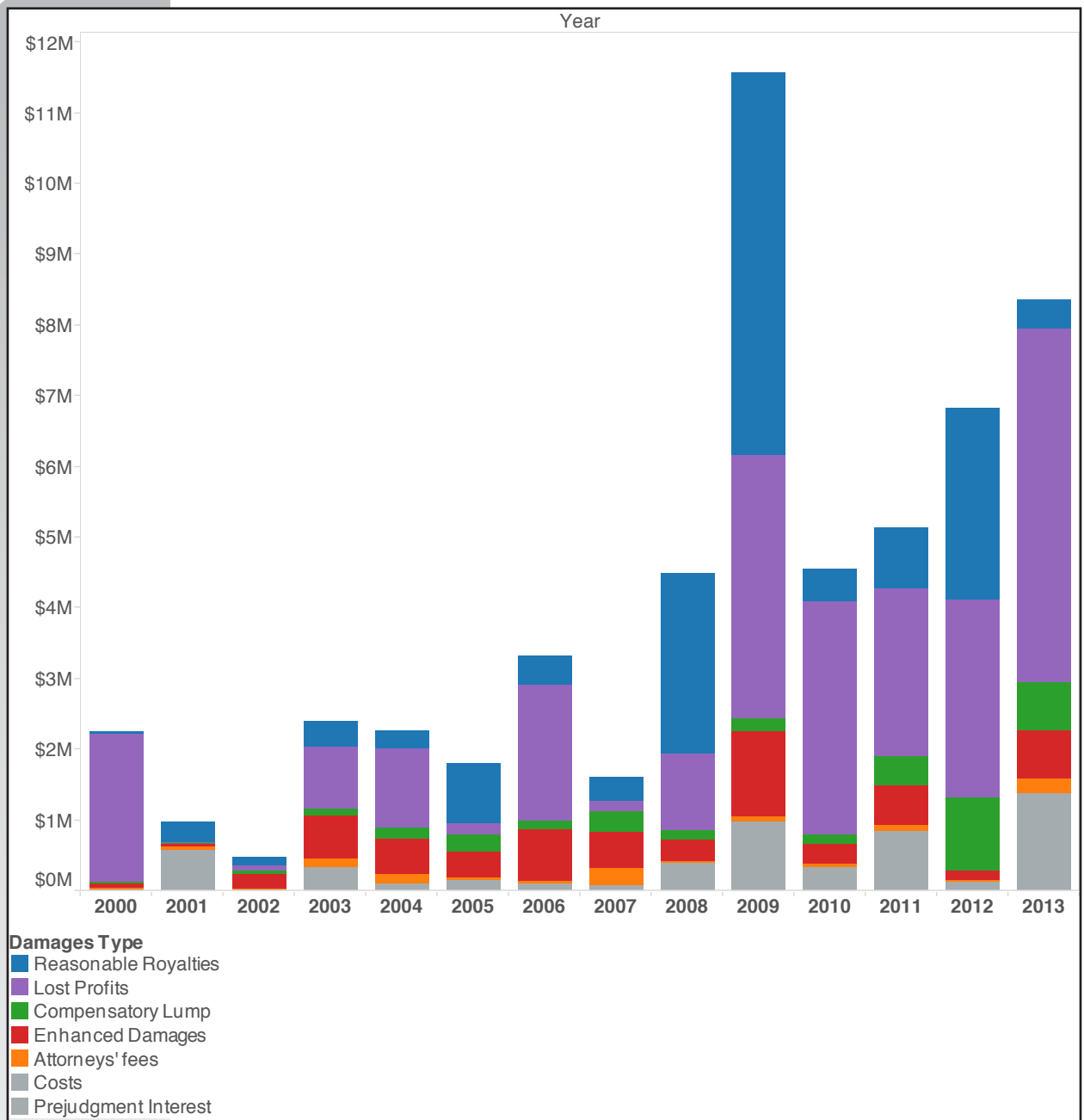
*Figure 4: Total Damages by Year (Data)*

Year	Reasonable Royalties	Lost Profits	Compensatory Lump	Enhanced Damages	Attorneys' fees	Costs	Prejudgment Interest
2000	\$352,422 4 cases	\$2,100,000 1 cases	\$163,600 13 cases	\$644,843 3 cases	\$69,299 5 cases	\$26,812 4 cases	\$18,732 1 cases
2001	\$1,252,084 4 cases	\$8,033,782 3 cases	\$9,223,198 11 cases	\$788,681 5 cases	\$8,404,259 15 cases	\$175,225 9 cases	\$1,142,526 2 cases
2002	\$3,648,777 9 cases	\$4,906,683 5 cases	\$191,634,885 34 cases	\$20,936,125 6 cases	\$3,299,136 28 cases	\$1,948,277 39 cases	\$3,380,148 7 cases
2003	\$86,001,124 18 cases	\$8,166,019 3 cases	\$149,599,207 28 cases	\$25,614,032 8 cases	\$13,566,777 25 cases	\$1,176,847 35 cases	\$10,848,591 13 cases
2004	\$120,341,089 17 cases	\$34,896,908 10 cases	\$69,961,866 44 cases	\$38,795,297 20 cases	\$26,654,554 28 cases	\$1,721,672 45 cases	\$133,223,596 23 cases
2005	\$157,455,295 15 cases	\$14,704,436 10 cases	\$61,620,718 27 cases	\$25,411,862 12 cases	\$6,131,771 31 cases	\$3,537,711 58 cases	\$5,741,892 11 cases
2006	\$127,541,745 13 cases	\$157,573,738 8 cases	\$416,888,446 39 cases	\$196,553,682 22 cases	\$17,505,284 28 cases	\$2,394,830 67 cases	\$20,863,524 18 cases
2007	\$347,178,183 31 cases	\$1,893,693 5 cases	\$167,426,354 37 cases	\$216,237,924 16 cases	\$45,762,103 27 cases	\$5,704,136 84 cases	\$12,919,147 20 cases
2008	\$1,259,023,625 35 cases	\$184,080,416 14 cases	\$80,553,714 35 cases	\$19,399,320 9 cases	\$13,399,040 34 cases	\$3,553,231 77 cases	\$232,126,822 21 cases
2009	\$1,497,391,828 38 cases	\$1,204,099,206 10 cases	\$58,692,371 29 cases	\$65,768,800 13 cases	\$28,930,713 32 cases	\$3,349,400 57 cases	\$272,756,809 26 cases
2010	\$221,605,422 23 cases	\$220,049,281 13 cases	\$36,873,970 30 cases	\$59,865,920 11 cases	\$14,984,448 27 cases	\$5,156,079 69 cases	\$116,964,245 10 cases
2011	\$848,267,981 30 cases	\$386,522,419 13 cases	\$202,468,699 26 cases	\$73,285,747 16 cases	\$12,615,930 28 cases	\$4,852,172 74 cases	\$203,076,656 21 cases
2012	\$1,981,500,398 38 cases	\$425,954,410 16 cases	\$543,066,385 19 cases	\$98,379,335 13 cases	\$14,407,648 19 cases	\$6,801,379 68 cases	\$21,484,449 14 cases
2013	\$1,373,292,296 25 cases	\$84,451,425 4 cases	\$266,988,430 26 cases	\$176,726,324 6 cases	\$13,164,301 15 cases	\$4,795,243 70 cases	\$103,115,477 15 cases

This report is concentrated on compensatory damages (including reasonable royalties, lost profits, and compensatory lumps), enhanced damages, and attorneys' fees, which comprise the bulk of damages awarded by the courts since 2000. Compared to other damages types, these tend to dominate the landscape of awards and are of the greatest interest to practitioners and litigants.



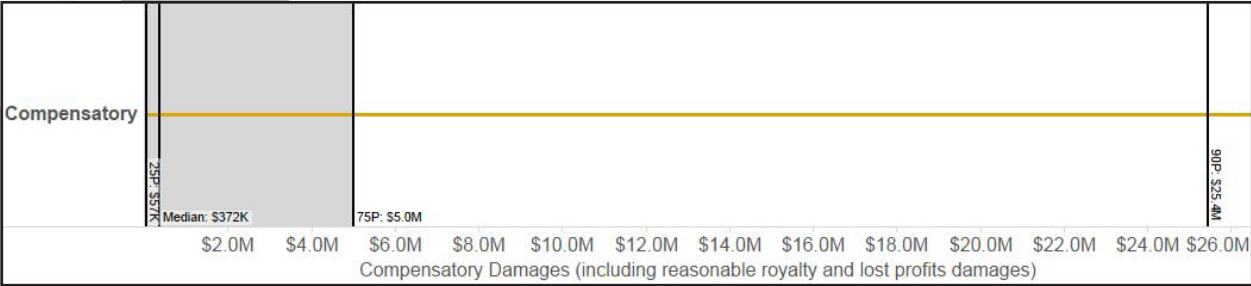
*Figure 5: Total Damages by Year (Percentages)*

*Figure 6: Median Damages by Year*

*Figure 7: Median Damages by Year (Data)*

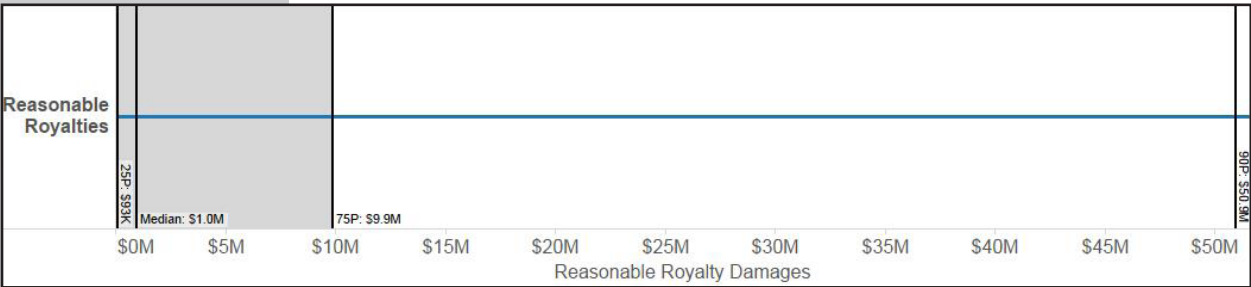
Year	Reasonable Royalties	Lost Profits	Compensatory Lump	Enhanced Damages	Attorneys' fees	Costs	Prejudgment Interest
2000	\$36,640 4 cases	\$2,100,000 1 cases	\$5,000 13 cases	\$86,560 3 cases	\$9,765 5 cases	\$373 4 cases	\$18,732 1 cases
2001	\$287,691 4 cases	\$14,328 3 cases	\$20,000 11 cases	\$40,000 5 cases	\$36,608 15 cases	\$9,486 9 cases	\$571,263 2 cases
2002	\$106,133 9 cases	\$69,798 5 cases	\$51,937 34 cases	\$203,707 6 cases	\$9,457 28 cases	\$10,904 39 cases	\$13,416 7 cases
2003	\$354,508 18 cases	\$866,000 3 cases	\$107,068 28 cases	\$604,568 8 cases	\$109,862 25 cases	\$16,536 35 cases	\$327,410 13 cases
2004	\$245,000 17 cases	\$1,119,582 10 cases	\$147,500 44 cases	\$513,000 20 cases	\$132,975 28 cases	\$15,867 45 cases	\$82,533 23 cases
2005	\$850,000 15 cases	\$157,500 10 cases	\$240,000 27 cases	\$372,443 12 cases	\$36,409 31 cases	\$19,264 58 cases	\$130,673 11 cases
2006	\$400,597 13 cases	\$1,907,012 8 cases	\$139,530 39 cases	\$729,174 22 cases	\$37,369 28 cases	\$7,683 67 cases	\$87,973 18 cases
2007	\$321,340 31 cases	\$150,000 5 cases	\$300,000 37 cases	\$504,717 16 cases	\$225,000 27 cases	\$29,024 84 cases	\$62,285 20 cases
2008	\$2,539,468 35 cases	\$1,085,596 14 cases	\$125,000 35 cases	\$306,669 9 cases	\$35,926 34 cases	\$19,051 77 cases	\$369,111 21 cases
2009	\$5,404,500 38 cases	\$3,721,248 10 cases	\$183,639 29 cases	\$1,200,000 13 cases	\$73,975 32 cases	\$21,947 57 cases	\$955,915 26 cases
2010	\$457,987 23 cases	\$3,300,503 13 cases	\$129,960 30 cases	\$265,840 11 cases	\$63,534 27 cases	\$11,027 69 cases	\$320,146 10 cases
2011	\$860,000 30 cases	\$2,358,613 13 cases	\$437,500 26 cases	\$540,500 16 cases	\$88,629 28 cases	\$20,984 74 cases	\$823,250 21 cases
2012	\$2,715,116 38 cases	\$2,800,000 16 cases	\$1,018,529 19 cases	\$137,500 13 cases	\$36,907 19 cases	\$28,769 68 cases	\$88,372 14 cases
2013	\$403,000 25 cases	\$5,000,000 4 cases	\$669,584 26 cases	\$698,965 6 cases	\$199,281 15 cases	\$19,342 70 cases	\$1,362,982 15 cases

Figure 8: Compensatory Damages - Percentiles



Maximum: \$1,672,594,000

Figure 9: Reasonable Royalties Damages - Percentiles



Maximum: \$1,169,140,271

Figure 10: Lost Profits Damages - Percentiles



Maximum: \$1,168,466,000

Figure 11: Enhanced Damages - Percentiles



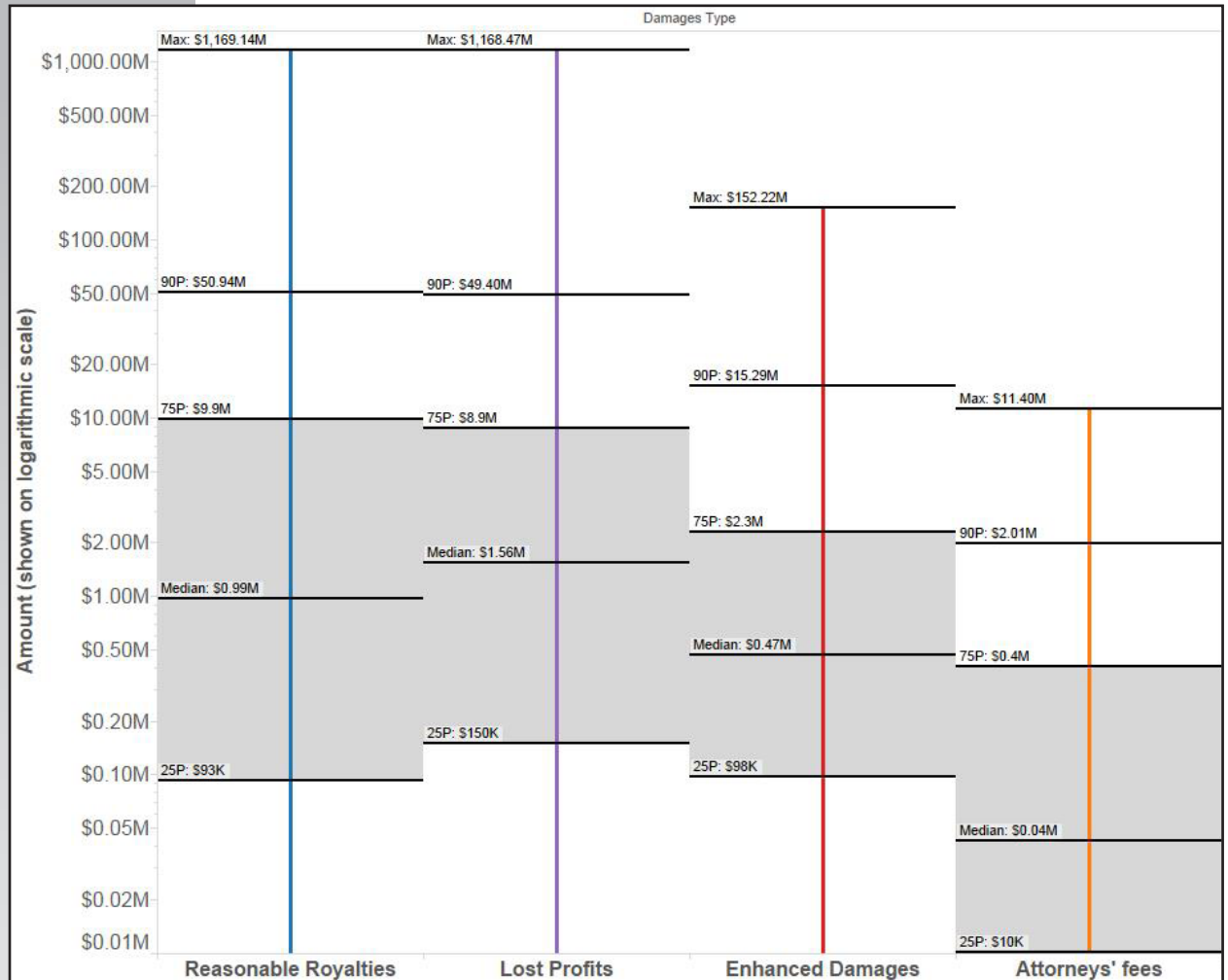
Maximum: \$152,217,785

Figure 12: Attorneys' Fees - Percentiles



Maximum: \$11,400,000

*Figure 13: Reasonable Royalties, Lost Profits, Enhanced Damages, and Attorneys' Fees - Comparison of Percentiles and Maximum*





## Largest Damages Awards

*Figure 14: Top 10 Compensatory Damages Awards<sup>1</sup>*

	Case	Total Damages	Year of Award	Winning Party(ies)	Losing Party(ies)	Damages Type(s)
1	Centocor v. Abbott Laboratories	\$1,672,594,000	2009	Centocor, New York University	Abbott Laboratories	Lost Profits, Reasonable Royalties
2	Carnegie Mellon University v. Marvell	\$1,169,140,271	2012	Carnegie Mellon University	Marvell	Reasonable Royalties
3	Monsanto v. DuPont	\$1,000,000,000	2013	Monsanto	DuPont	Reasonable Royalties
4	Saffran v. Johnson & Johnson	\$482,000,000	2011	Bruce N. Saffran	Cordis, Johnson & Johnson	Reasonable Royalties
5	Sanofi-Synthelabo v. Apotex	\$442,209,362	2012	Sanofi-Synthelabo	Apotex	Compensatory Lump
6	Saffran v. Boston Scientific	\$431,867,351	2008	Bruce N. Saffran	Boston Scientific	Reasonable Royalties
7	VirnetX v. Cisco	\$368,160,000	2012	VirnetX	Apple	Reasonable Royalties
8	Lucent Technologies v. Gateway	\$368,094,056	2008	Lucent Technologies	Dell, Microsoft	Reasonable Royalties
9	SK Hynix v. Rambus	\$349,035,842	2009	Rambus	Hynix Semiconductor	Reasonable Royalties
10	Versata Software v. SAP America	\$328,654,806	2011	Versata Software	SAP America	Lost Profits, Reasonable Royalties

<sup>1</sup> Damages in the *Apple v. Samsung* case (5:11-cv-1846) have been excluded, as they are awarded on the basis of both trade dress claims and patent infringement claims without apportionment (coded here as “cross-category” damages, which are excluded from this report unless explicitly stated otherwise).

*Figure 15: Top 10 Reasonable Royalties Damages Awards*

	Case	Total Damages	Year of Award	Winning Party(ies)	Losing Party(ies)
1	Carnegie Mellon University v. Marvell	\$1,169,140,271	2012	Carnegie Mellon University	Marvell
2	Monsanto v. DuPont	\$1,000,000,000	2013	Monsanto	DuPont
3	Centocor v. Abbott Laboratories	\$504,128,000	2009	Centocor and New York University	Abbott Laboratories
4	Saffran v. Johnson & Johnson	\$482,000,000	2011	Bruce N. Saffran	Cordis, Johnson & Johnson
5	Saffran v. Boston Scientific	\$431,867,351	2008	Bruce N. Saffran	Boston Scientific
6	VirnetX v. Cisco	\$368,160,000	2012	VirnetX	Apple
7	Lucent Technologies v. Gateway	\$368,094,056	2008	Lucent Technologies	Dell, Microsoft
8	SK Hynix v. Rambus	\$349,035,842	2009	Rambus	Hynix Semiconductor
9	i4i v. Microsoft	\$200,000,000	2009	i4i	Microsoft
10	TGIP v. AT&T	\$156,289,609	2007	TGIP	AT&T

*Figure 16: Top 10 Lost Profits Damages Awards*

	Case	Total Damages	Year of Award	Winning Party(ies)	Losing Party(ies)
1	Centocor v. Abbott Laboratories	\$1,168,466,000	2009	Centocor, New York University	Abbott Laboratories
2	Versata Software v. SAP America	\$248,158,882	2011	Versata Software	SAP America
3	General Electric v. Mitsubishi Heavy Industries	\$166,750,000	2012	General Electric	Mitsubishi Heavy Industries
4	Bard Peripheral Vascular v. W. L. Gore & Associates	\$102,081,579	2008	Bard Peripheral Vascular	W. L. Gore & Associates
5	Medtronic v. Nuvasive	\$101,196,000	2011	Warsaw Orthopedic	NuVasive
6	WesternGeco v. ION Geophysical	\$93,400,000	2012	WesternGeco	ION Geophysical
7	Edwards Lifesciences v. Corevalve	\$72,645,555	2010	Edwards Lifesciences	Corevalve
8	Globespanvirata v. Texas Instruments	\$70,000,000	2006	Texas Instruments	Globespanvirata
9	Stryker v. Zimmer	\$70,000,000	2013	Stryker	Zimmer
10	Dow Chemical v. Nova Chemicals	\$57,447,024	2010	Dow Chemical	Nova Chemicals

*Figure 17: Top 10 Enhanced Damages Awards*

	Case	Total Damages	Year of Award	Winning Party(ies)	Losing Party(ies)
1	Stryker v. Zimmer	\$152,217,785	2013	Stryker	Zimmer
2	Advanced Medical Optics v. Alcon	\$142,600,000	2006	Advanced Medical Optics	Alcon
3	Muniauction v. Thomson Corporation	\$76,964,016	2007	Muniauction	Thomson Corporation
4	Philips v. KXD	\$58,510,166	2007	Philips	KXD
5	Zenith v. Vizio	\$50,867,936	2010	Zenith	Vizio
6	i4i v. Microsoft	\$40,000,000	2009	i4i	Microsoft
7	University of Pittsburgh v. Varian Medical Systems	\$39,892,515	2012	University of Pittsburgh	Varian Medical Systems
8	Hill Design Group v. Spring Wang	\$35,721,884	2007	Hill Design Group	Spring Wang
9	DataTreasury v. Wells Fargo	\$26,606,000	2011	DataTreasury	U.S. Bank National Association
10	z4 Technologies v. Microsoft	\$25,000,000	2006	z4 Technologies	Microsoft

*Figure 18: Top 10 Attorneys' Fees Awards*

	Case	Total Damages	Year of Award	Winning Party(ies)	Losing Party(ies)
1	Takeda Chemical v. Mylan Laboratories	\$11,400,000	2009	Takeda Chemical	Mylan Pharmaceuticals
2	Aventis v. Amphastar	\$9,231,058	2007	Amphastar, Teva	Aventis
3	University of Pittsburgh v. Varian Medical Systems	\$9,200,000	2012	University of Pittsburgh	Varian Medical Systems
4	Stryker v. Zimmer	\$8,000,000	2013	Stryker	Zimmer
5	Philips v. Postech	\$7,367,946	2004	Philips	Postech
6	Rambus v. Infineon	\$7,123,990	2001	Infineon	Rambus
7	TALtech v. Esquel Enterprises	\$6,790,045	2007	Esquel Enterprises	TALtech
8	Lazare Kaplan International v. Photoscribe	\$6,305,979	2009	Gemological Institute of America, Photoscribe	Lazare Kaplan International
9	Microtune v. Broadcom	\$5,657,827	2004	Microtune Inc	Broadcom
10	Nilssen v. Osram Sylvania	\$5,600,000	2007	Osram Sylvania	GEO Foundation and Ole Nilssen

## Damages Awards Compared to Total Terminated Cases

### Compensatory Damages

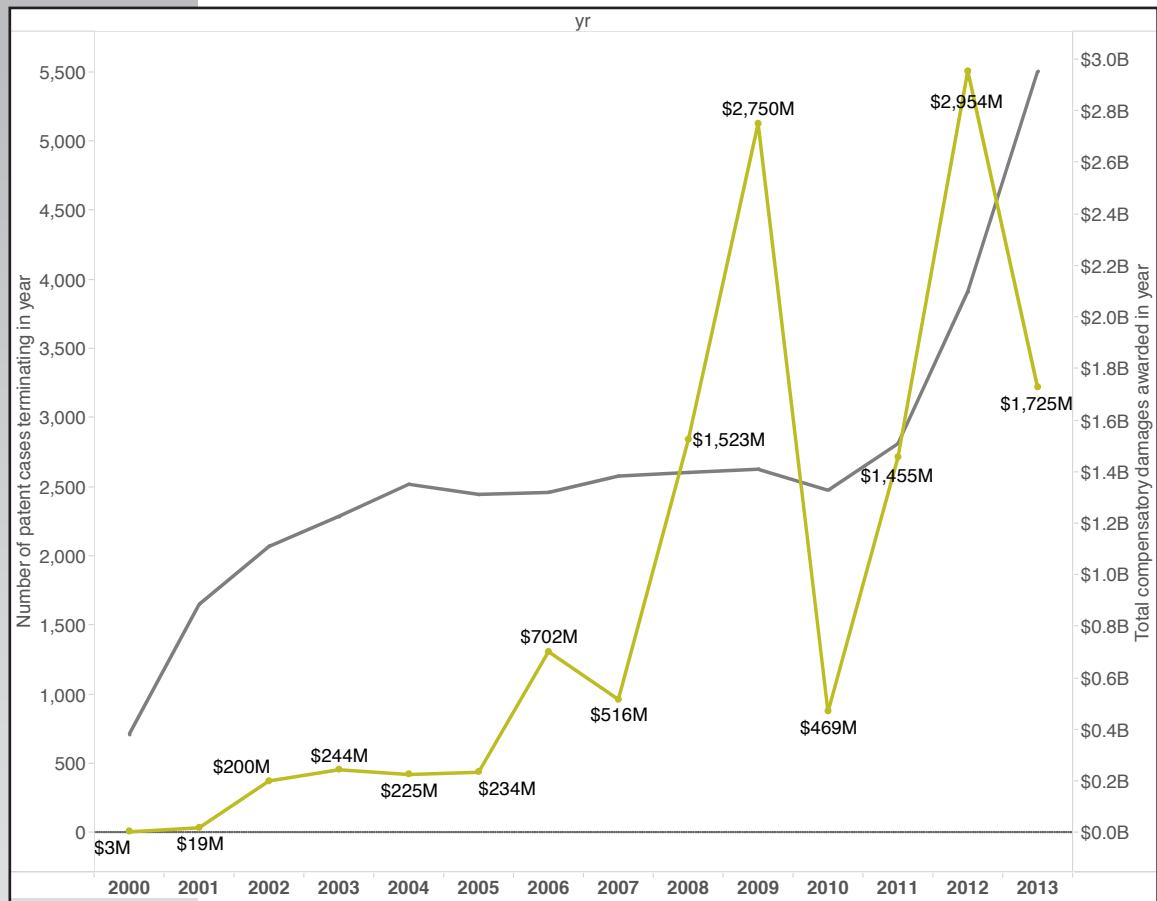
*Figure 19: Compensatory Damages - Totals and Medians by Year<sup>1</sup>*

Year	Cases Terminated	Total	Median
2000	710	\$2,616,022	\$8,000
2001	1,649	\$18,509,064	\$35,000
2002	2,068	\$200,190,346	\$67,665
2003	2,285	\$243,766,349	\$258,232
2004	2,517	\$225,199,863	\$177,180
2005	2,444	\$233,780,449	\$308,159
2006	2,458	\$702,003,929	\$341,671
2007	2,575	\$545,753,313	\$321,340
2008	2,602	\$1,523,257,755	\$747,506
2009	2,625	\$2,749,905,720	\$1,392,364
2010	2,473	\$468,582,644	\$305,399
2011	2,810	\$1,454,803,013	\$917,500
2012	3,910	\$2,953,600,993	\$1,856,270
2013	5,503	\$1,724,732,151	\$688,000

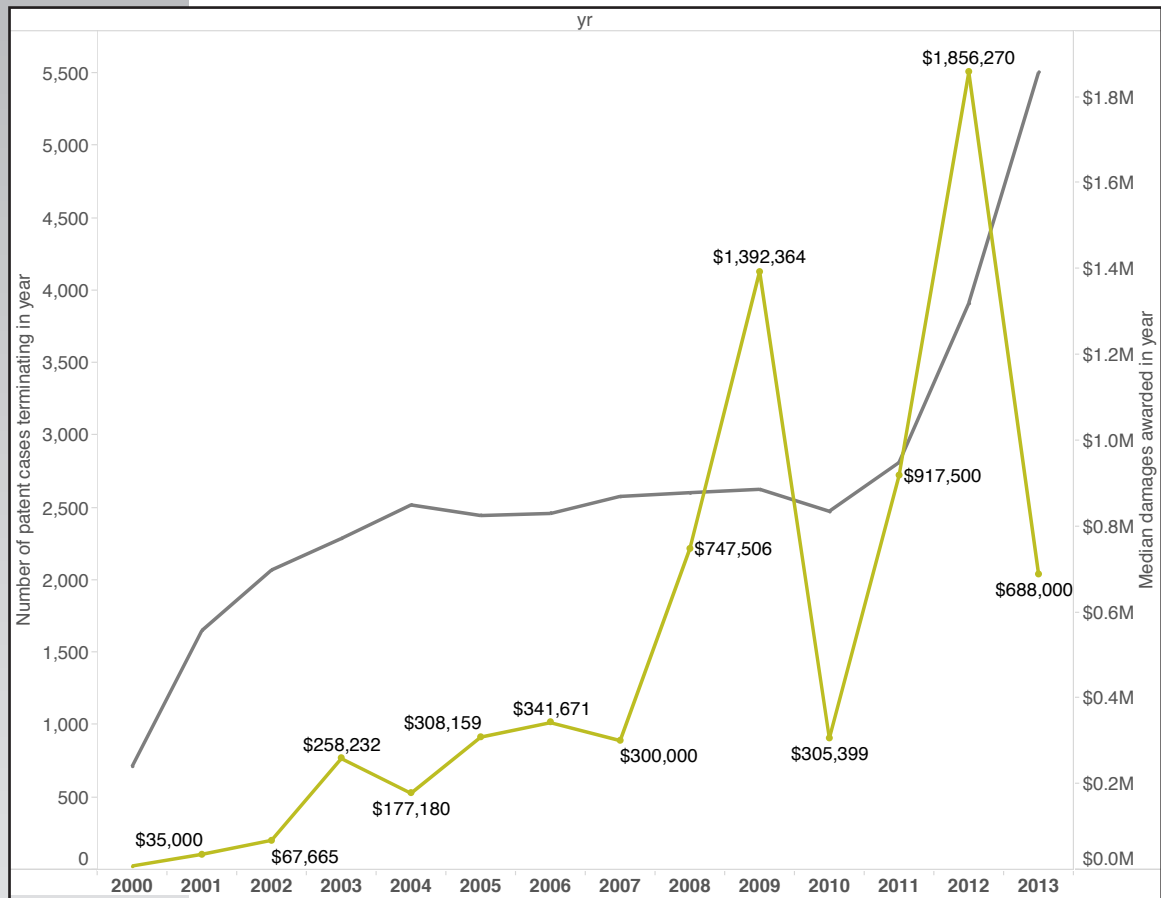
<sup>1</sup> To provide more useful insight, all compensatory damages within a case have been summed and attributed to most recent year in which any were awarded. Otherwise, awards from a single case might be split across years, reducing median figures improperly. Number of cases terminated shown to provide approximate correlation between volume of litigation and trends in damages.



*Figure 20: Compensatory Damages - Totals Compared to Total Terminated Cases*

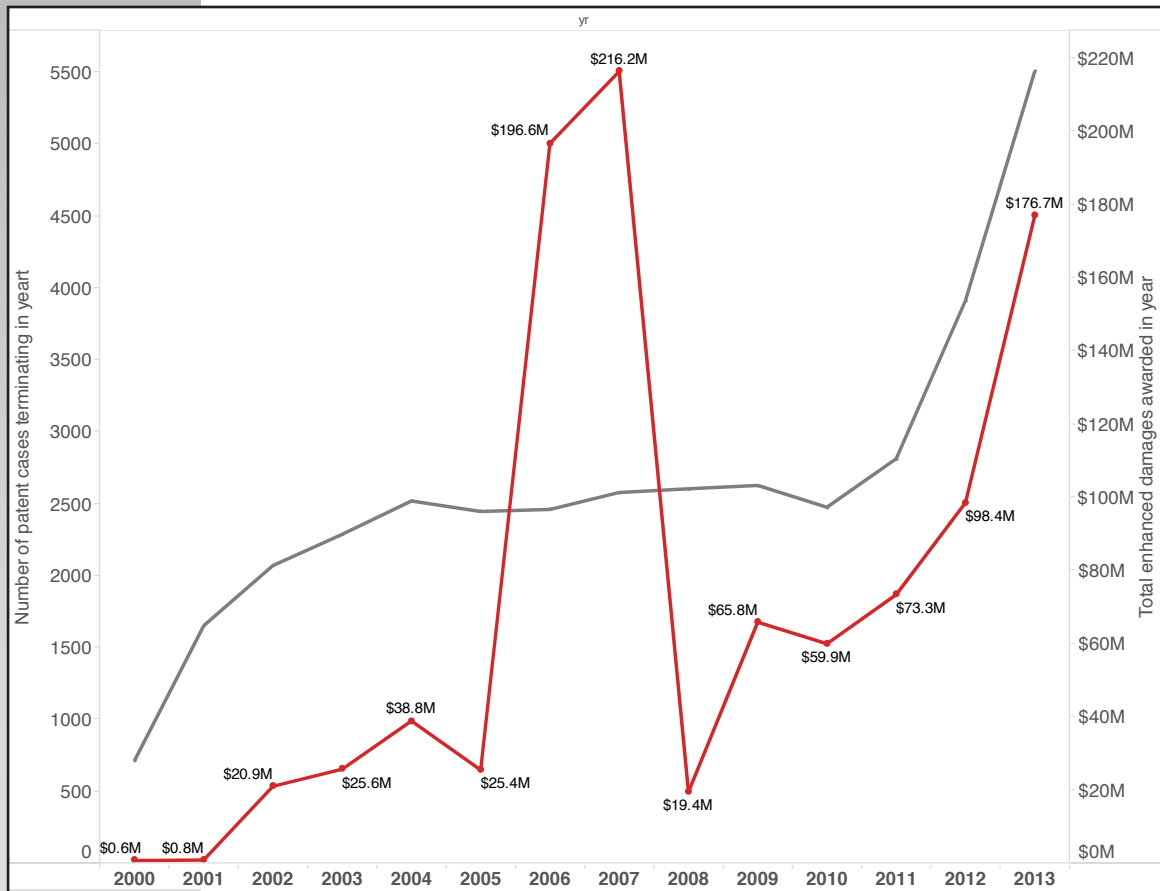


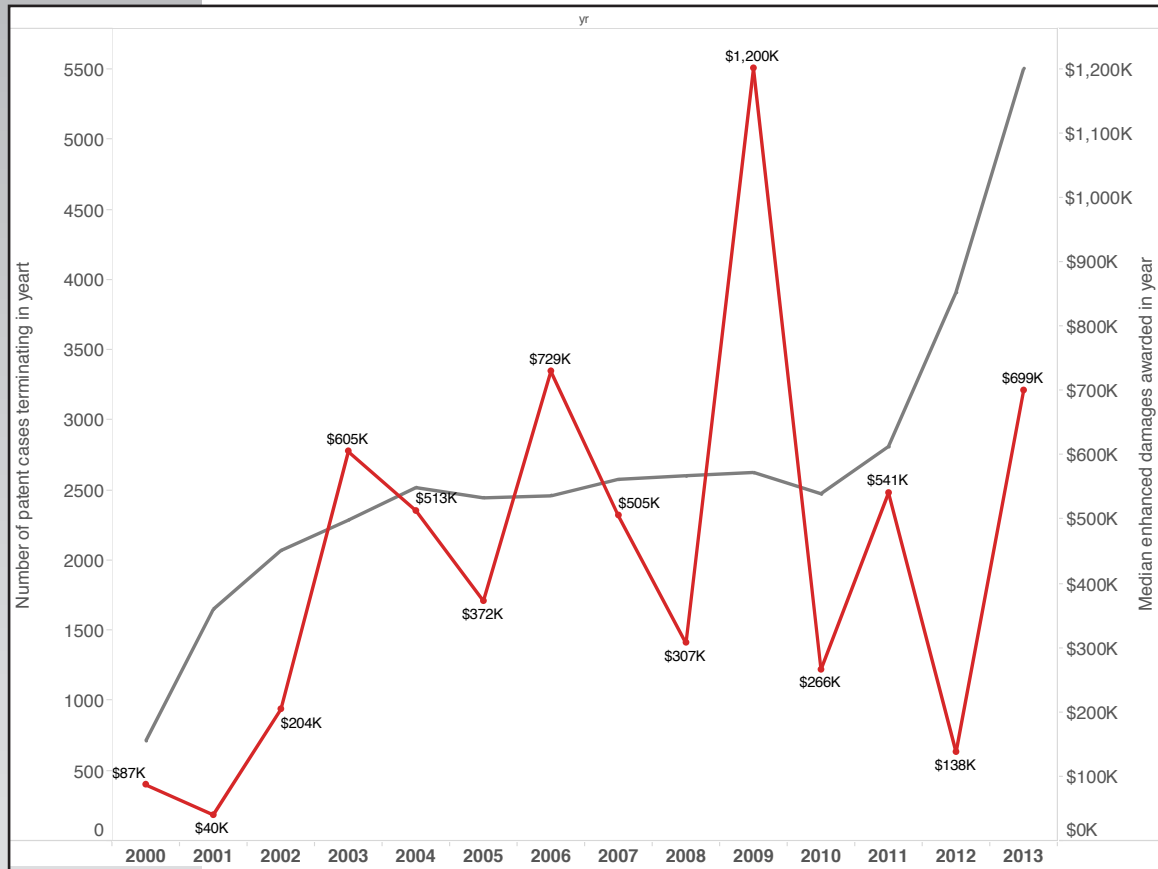
*Figure 21: Compensatory Damages - Medians Compared to Total Terminated Cases*



## Enhanced Damages

Figure 22: Enhanced Damages - Totals Compared to Total Terminated Cases



*Figure 23: Enhanced Damages - Medians Compared to Total Terminated Cases*

## Attorneys' Fees

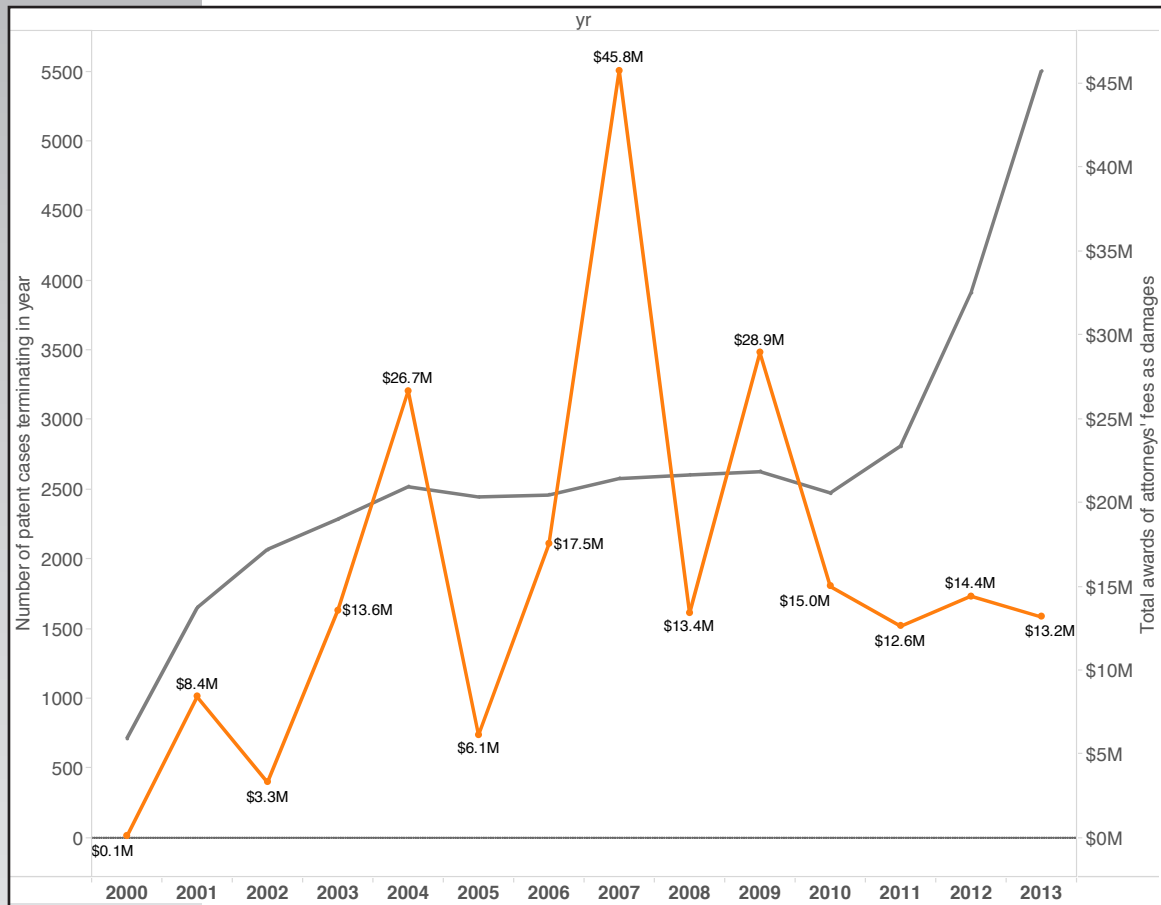
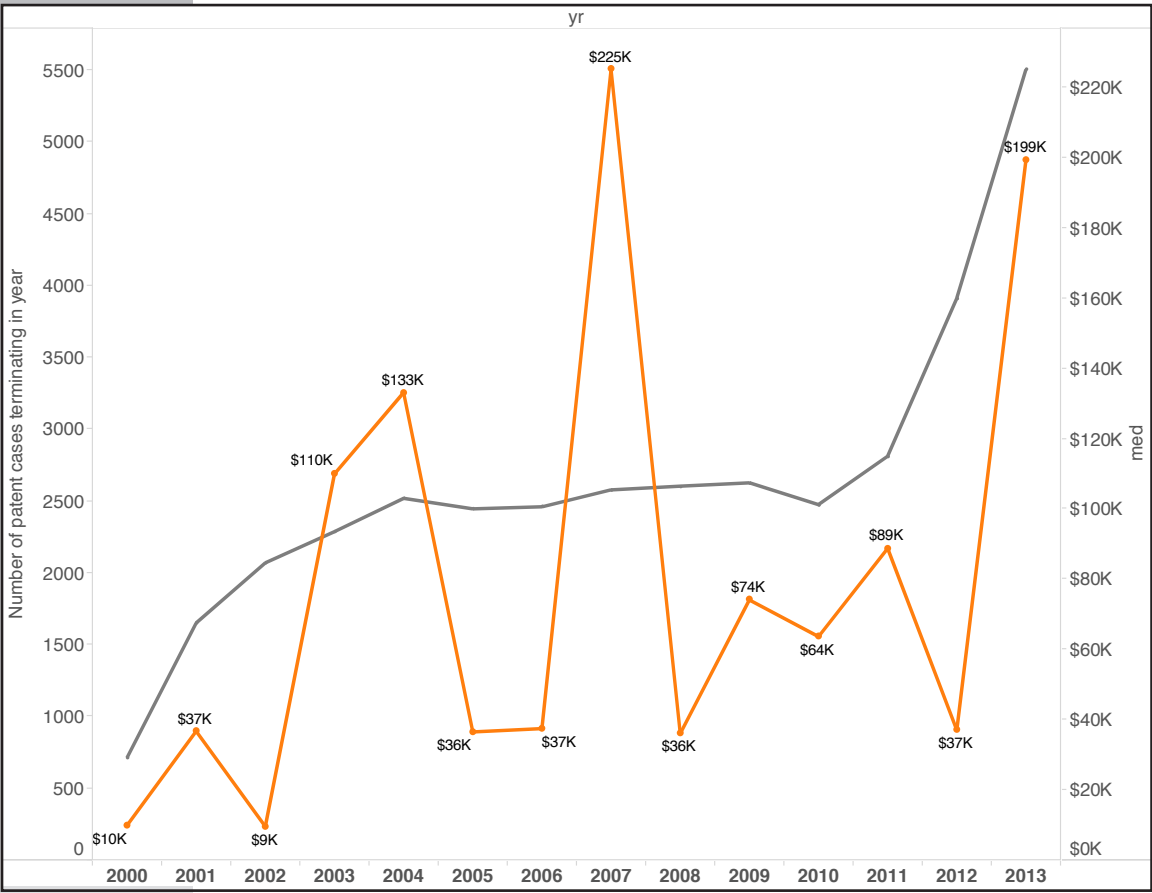
*Figure 24: Attorneys' Fees - Totals Compared to Total Terminated Cases*

Figure 25: Attorneys' Fees - Medians Compared to Total Terminated Cases





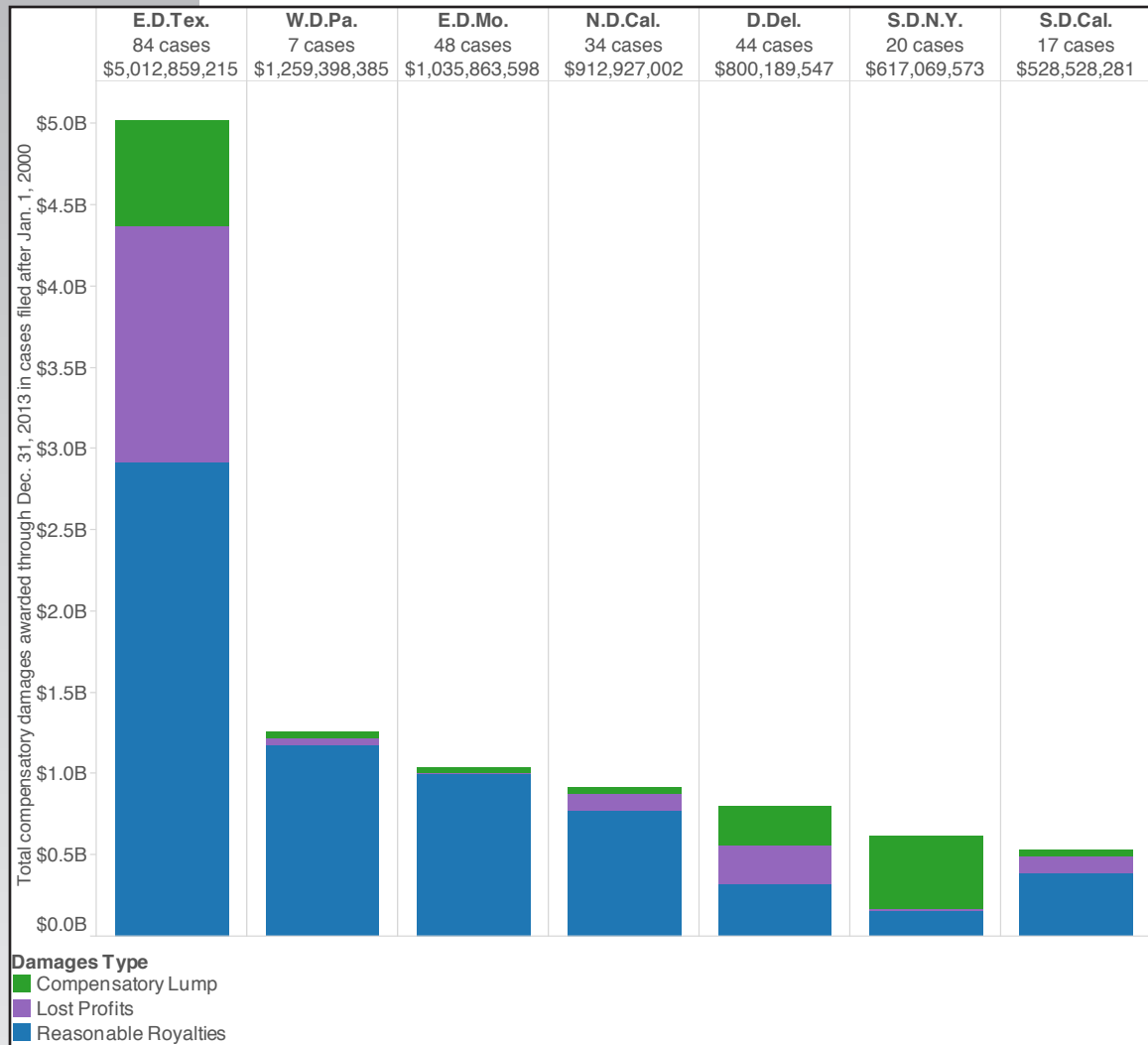
## District Courts

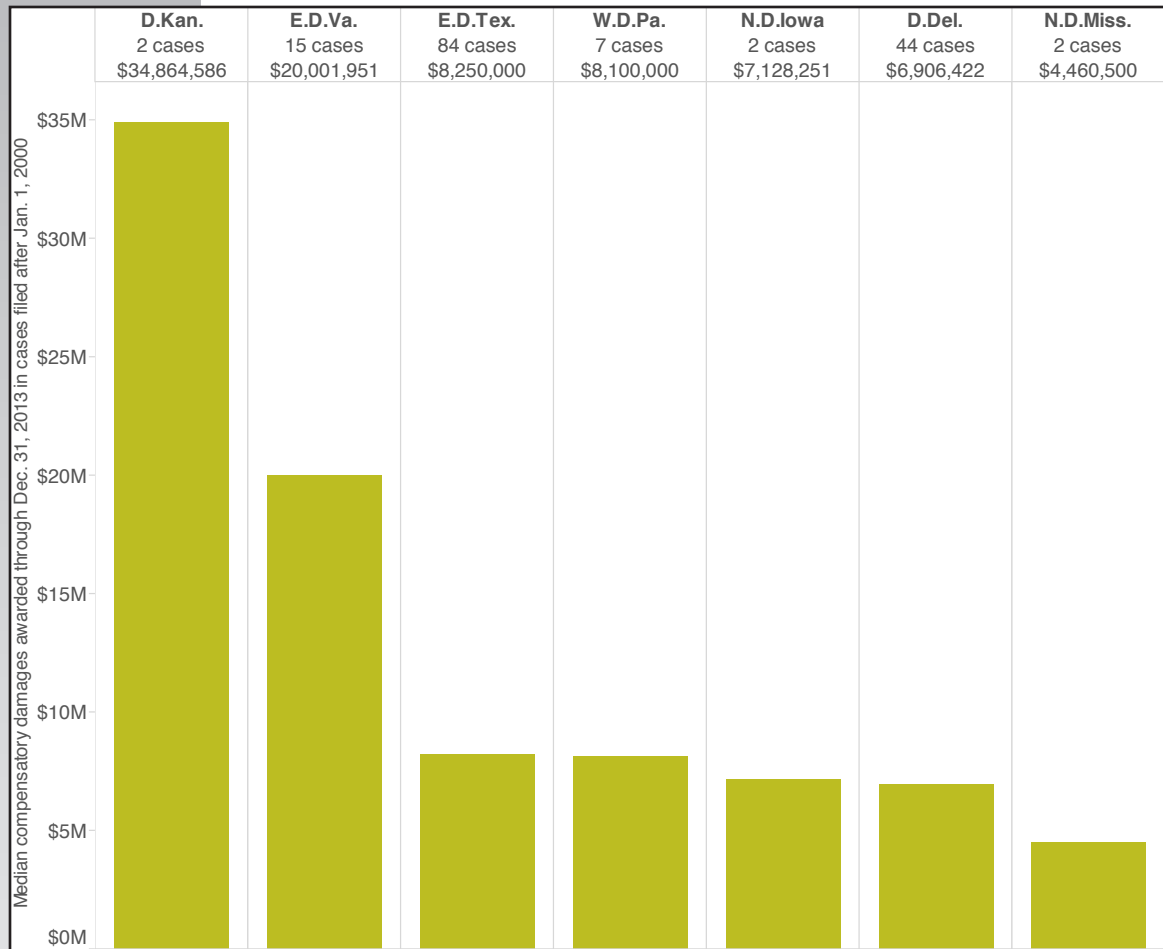
Figure 26: All Districts – Total Cases With Compensatory Damages

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	Total
C.D.Cal.	3	4	4	4	7	8	6	11	9	7	3	7	6	4	83
C.D.Ill.								1	1						2
D.Ariz.			1		1				2				3		7
D.Colo.				1		1				2	1				5
D.Conn.					1		1				1			1	4
D.D.C.				1											1
D.Del.			5	6	3	1	6	4	5	2	3	3	3	3	44
D.Haw.									1	1					2
D.Idaho				1				1						1	3
D.Kan.								1					1		2
D.Mass.			1		2	4		4	1	2			1	1	16
D.Md.					1			1	1						3
D.Me.										1					1
D.Minn.				1	1	3	1	2	1	4	4	2		2	21
D.N.D.									1						1
D.N.H.											1				1
D.N.J.						2	2		1	2	1	1	3		12
D.N.M.													1		1
D.Neb.										1	1				2
D.Nev.					4	1		1	3	2	2	1	1	1	16
D.Or.				2			1		1	2					6
D.R.I.									1				1		2
D.S.C.		1	2			1	1			1	1				7
D.S.D.			1												1
D.Utah					1							2	2	2	7
E.D.Ark.					1	2		1			1				5
E.D.Cal.	1		1			1			1			1			5
E.D.La.					1									1	2
E.D.Mich.			2	2		1		3	2			1			11
E.D.Mo.		2	3	4	7	4	3	4	4	6	4	3	1	3	48
E.D.N.C.			3		1			2							6
E.D.N.Y.												2		1	3
E.D.Pa.					1		1		1	1					4
E.D.Tenn.											1				1
E.D.Tex.			1	3	2	2	7	2	14	8	9	17	12	7	84
E.D.Va.			1	4				3	1	1	1	2	2		15
E.D.Wash.			1			1									2
E.D.Wis.					1									1	2
M.D.Fla.			3	4	2		3	3		1	2	4	2	3	27
M.D.N.C.					1		1	1	1						4
M.D.Pa.									1		1				2
M.D.Tenn.										2	1				3
N.D.Ala.							2		2						4
N.D.Cal.			1	2	4		4	4	4	4	2	2	4	3	34
N.D.Ga.						1	1	2	1			2	1	1	9
N.D.Ill.	5	4	2	1	3	4	4	4	5		2	2	6	1	43
N.D.Ind.							1		1		2				4
N.D.Iowa					1					1					2
N.D.Miss.											2				2
N.D.N.Y.			1		1	1	1			1					5
N.D.Ohio				1				2	1	1	1	3	1		10
N.D.Okla.			1												1
N.D.Tex.	1			3	5	1		1	3	1	1	1	2	3	22
S.D.Cal.	2	1				2	1		1	1	2	3	2	2	17
S.D.Fla.		1	4	1	2	2	2	3	2	2	2	1			22
S.D.Ill.											2				2
S.D.Ind.						1	1			1			1		4
S.D.Iowa			3		1		1	1							6
S.D.N.Y.		1		1	6	1	1	3	1	3			1	2	20
S.D.Ohio					1										1
S.D.Tex.	1	1	2	1	1	2		2		1			1		12
W.D.Ark.													1		1
W.D.Mich.			1		1		1		1			1		1	6
W.D.Mo.	1									1					2
W.D.N.C.	1														1
W.D.N.Y.											2				2
W.D.Okla.	1						1	1					1		4
W.D.Pa.							1			2		1	2	1	7
W.D.Tenn.			1			1									3
W.D.Tex.	1	1						2		1	1			1	7
W.D.Wash.	1					2		1			1		1	2	8
W.D.Wis.				2	1		1	2		1	1	2	3		13
Grand Total	18	16	45	45	65	50	56	73	75	67	59	64	66	49	748

## Compensatory Damages

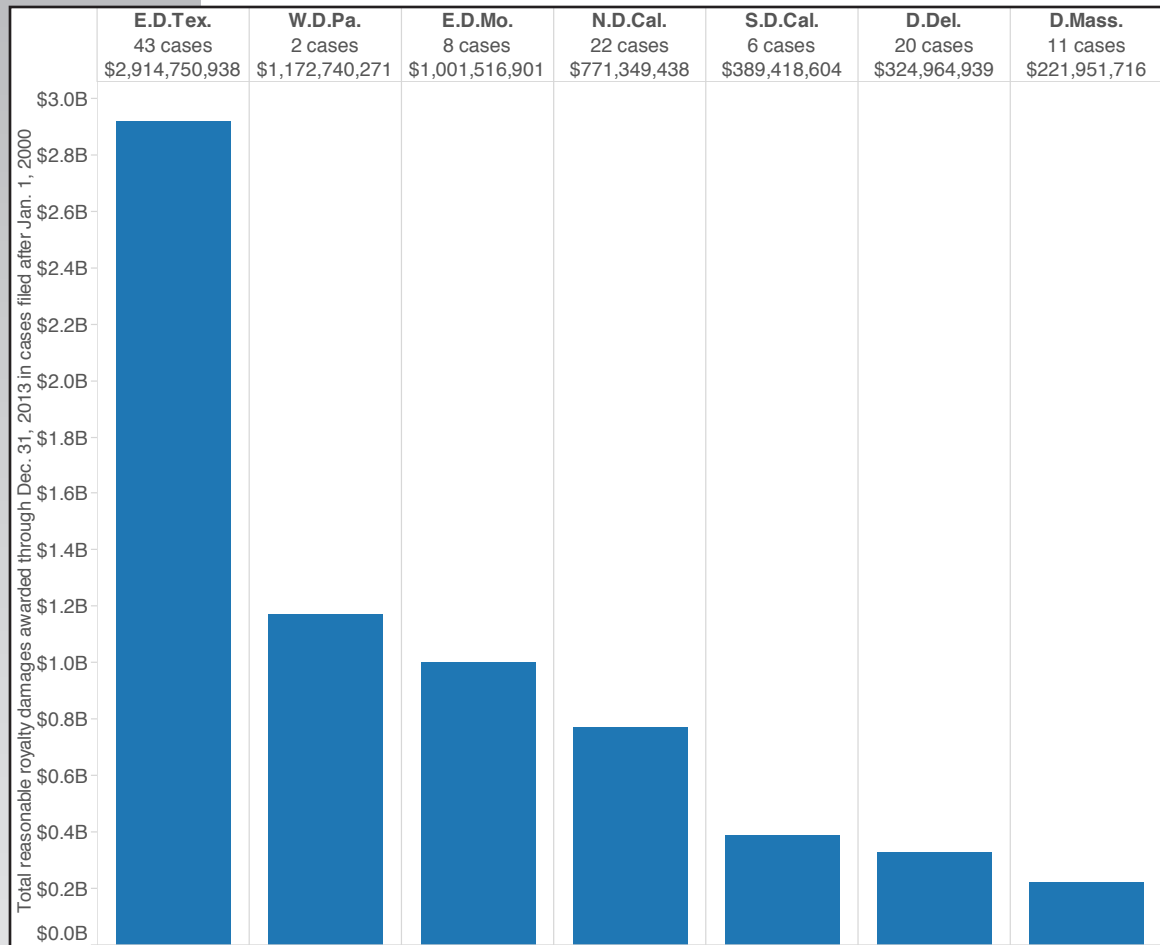
*Figure 27: Top Districts – Compensatory Damages Totals*

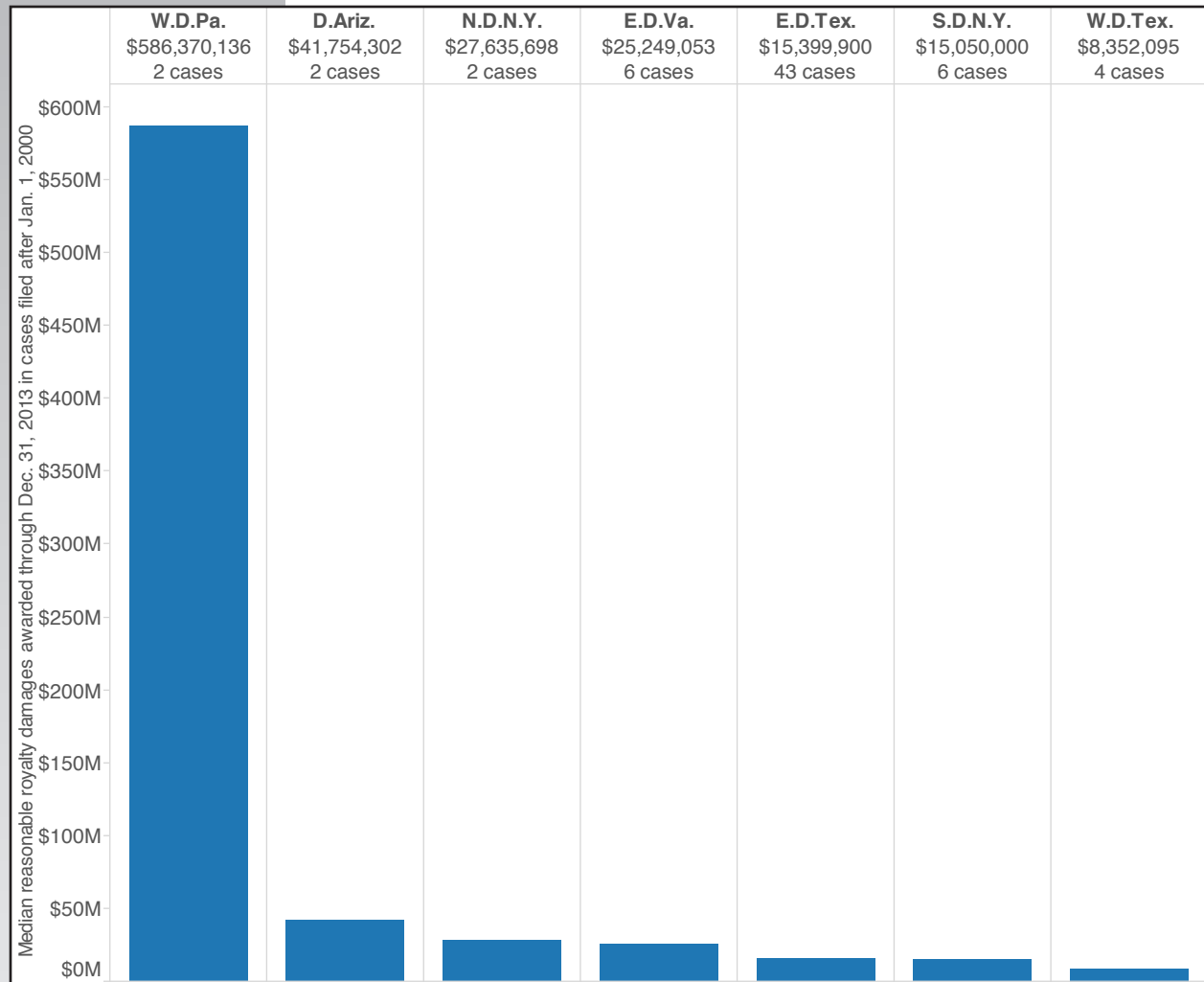


*Figure 28: Top Districts - Compensatory Damages Medians*

(showing districts with 2 or more cases)

## Reasonable Royalties Damages

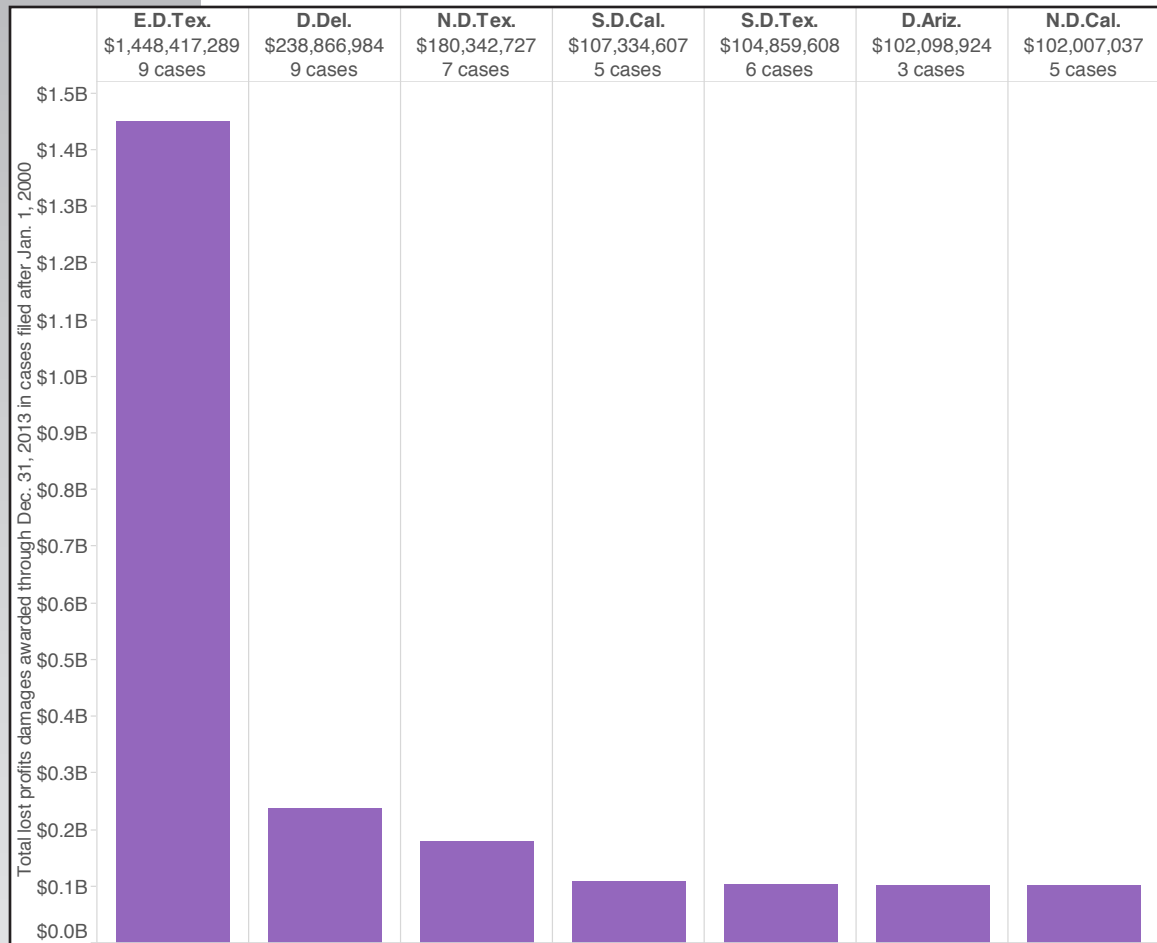
*Figure 29: Top Districts– Reasonable Royalties Damages Totals*

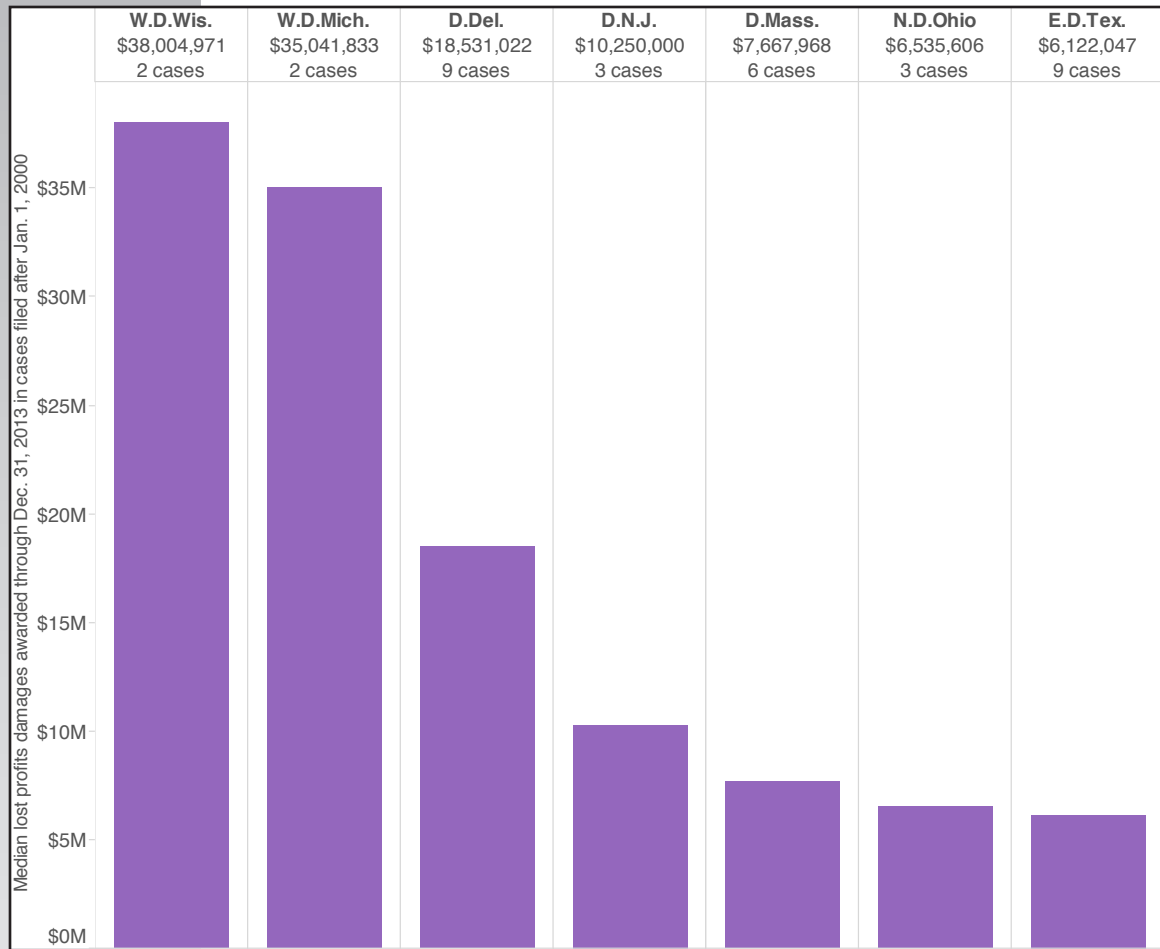
*Figure 30: Top Districts - Reasonable Royalties Damages Medians*

(showing districts with 2 or more cases)

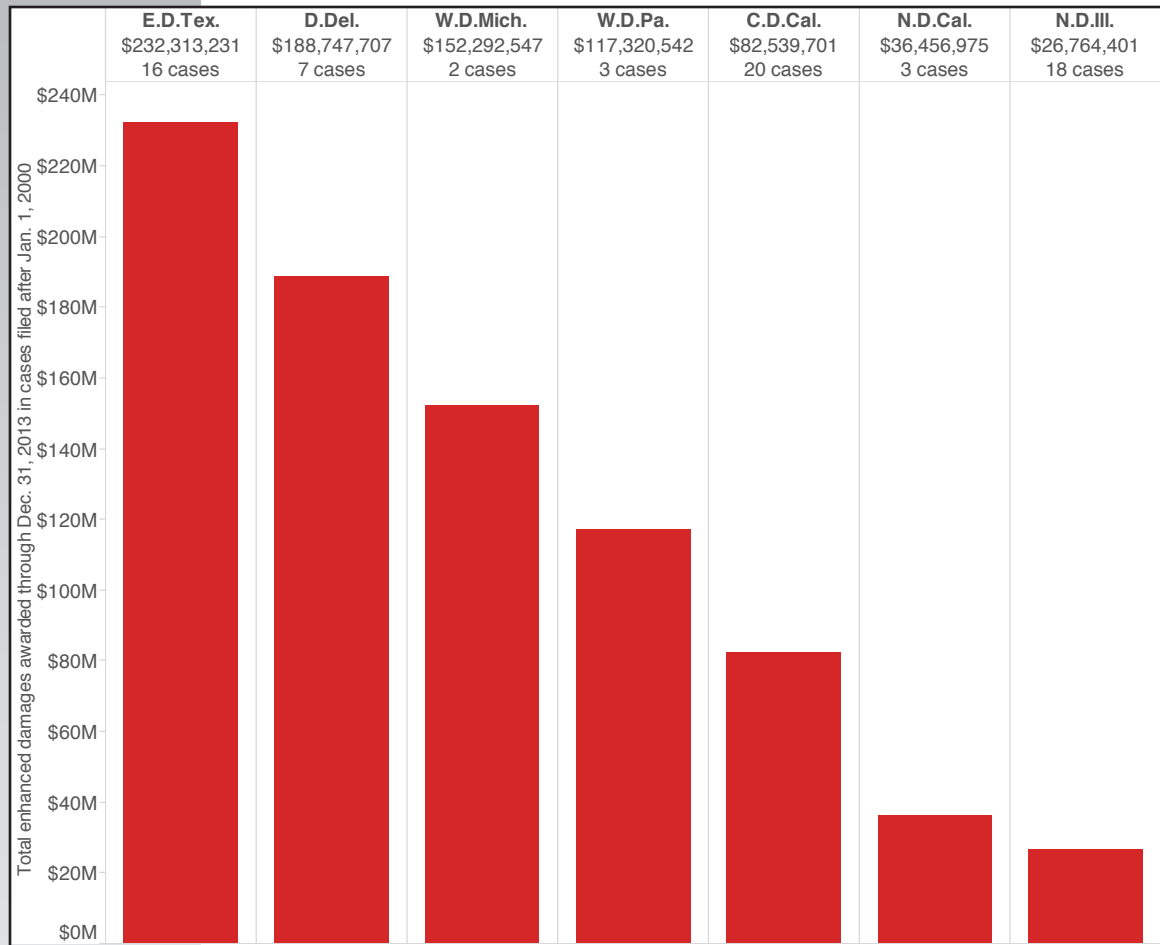
## Lost Profits Damages

*Figure 31: Top Districts - Lost Profits Damages Totals*

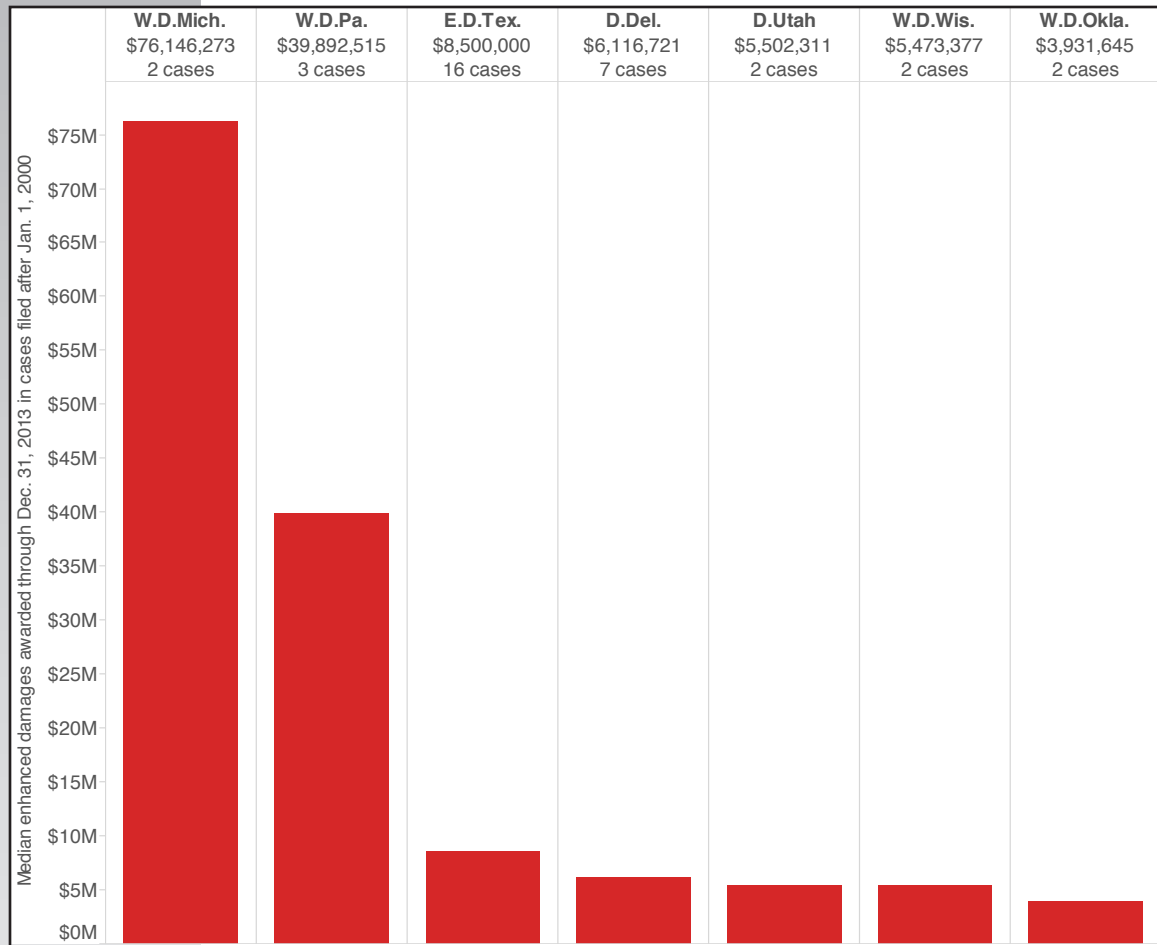


*Figure 32: Top Districts - Lost Profits Damages Medians*

(showing districts with 2 or more cases)

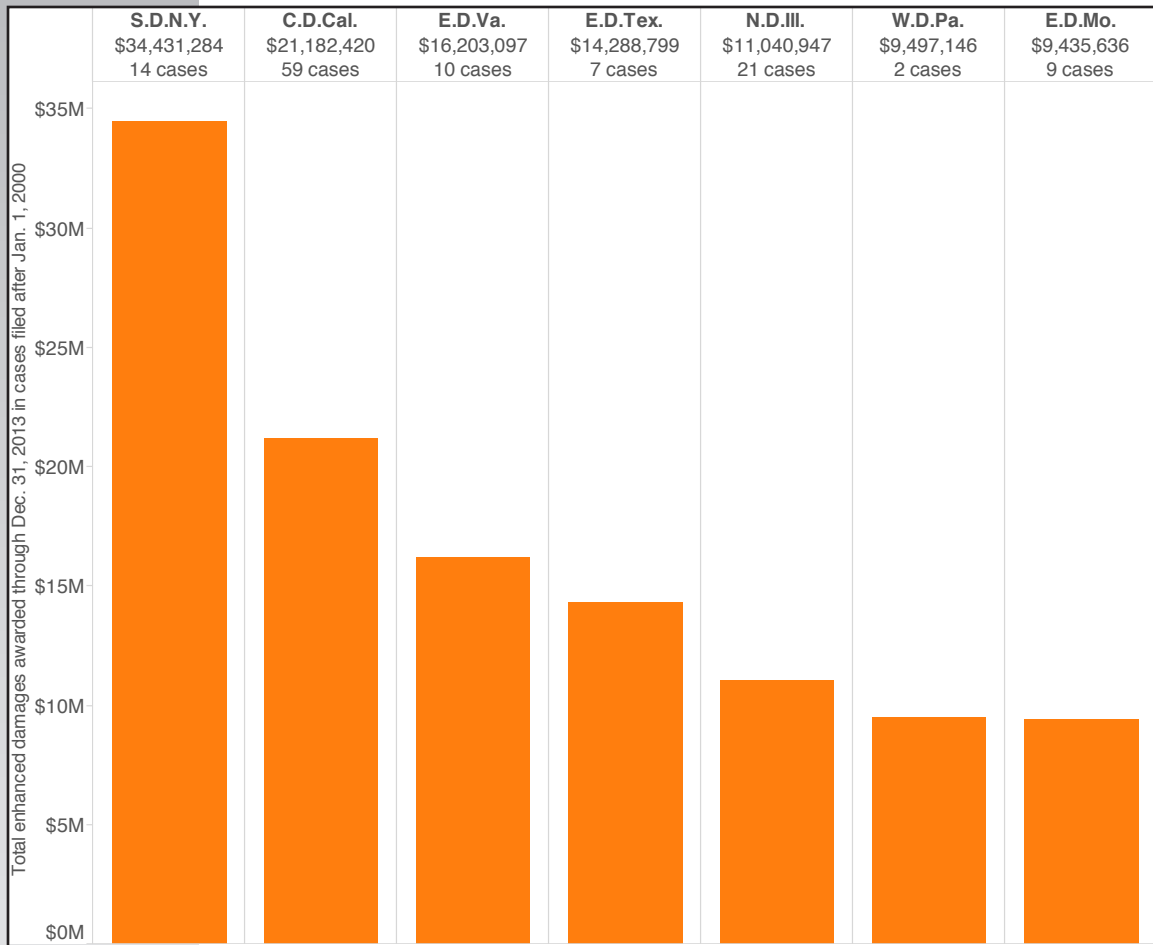
*Figure 33: Top Districts - Enhanced Damages Totals*

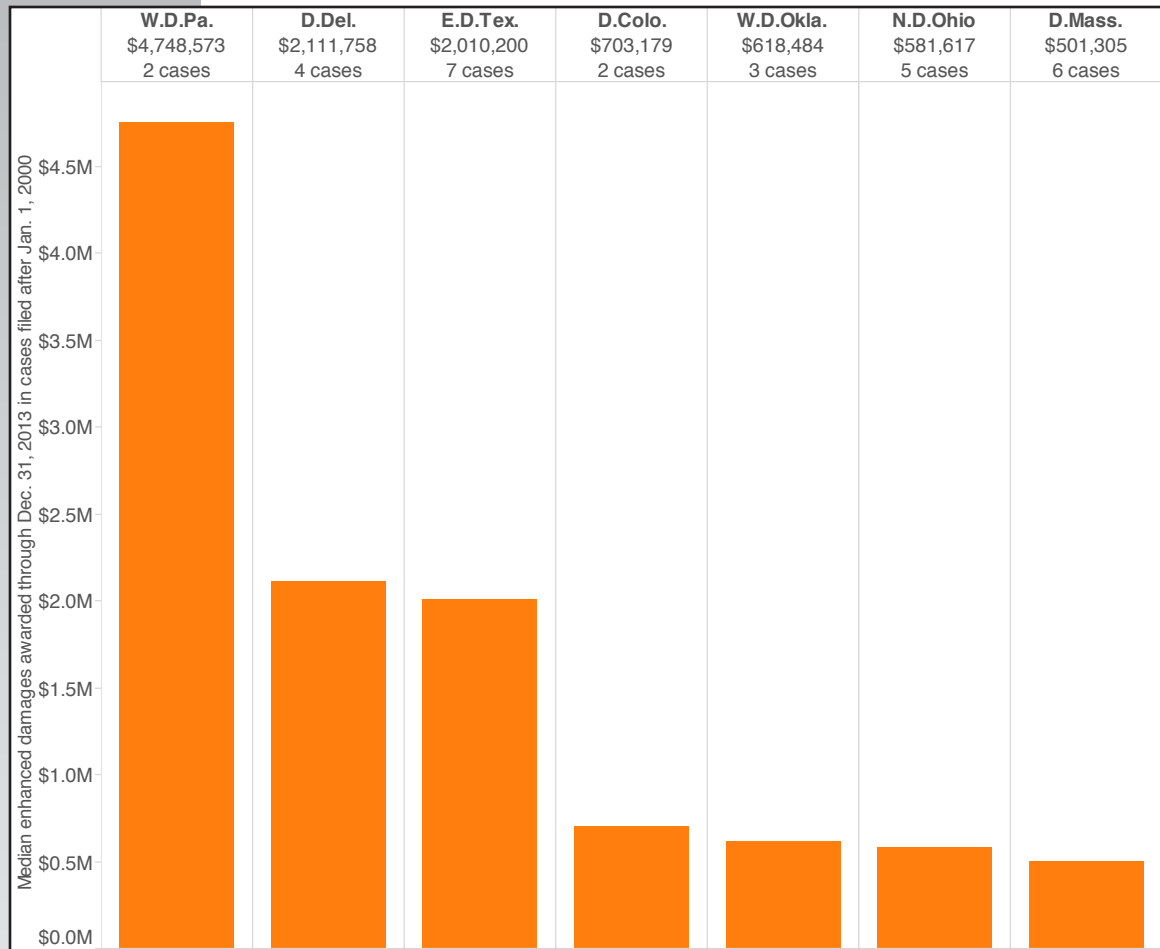


*Figure 34: Top Districts - Enhanced Damages Medians*

(showing districts with 2 or more cases)

## Attorneys' Fees

*Figure 35: Top Districts – Attorneys' Fees Totals*

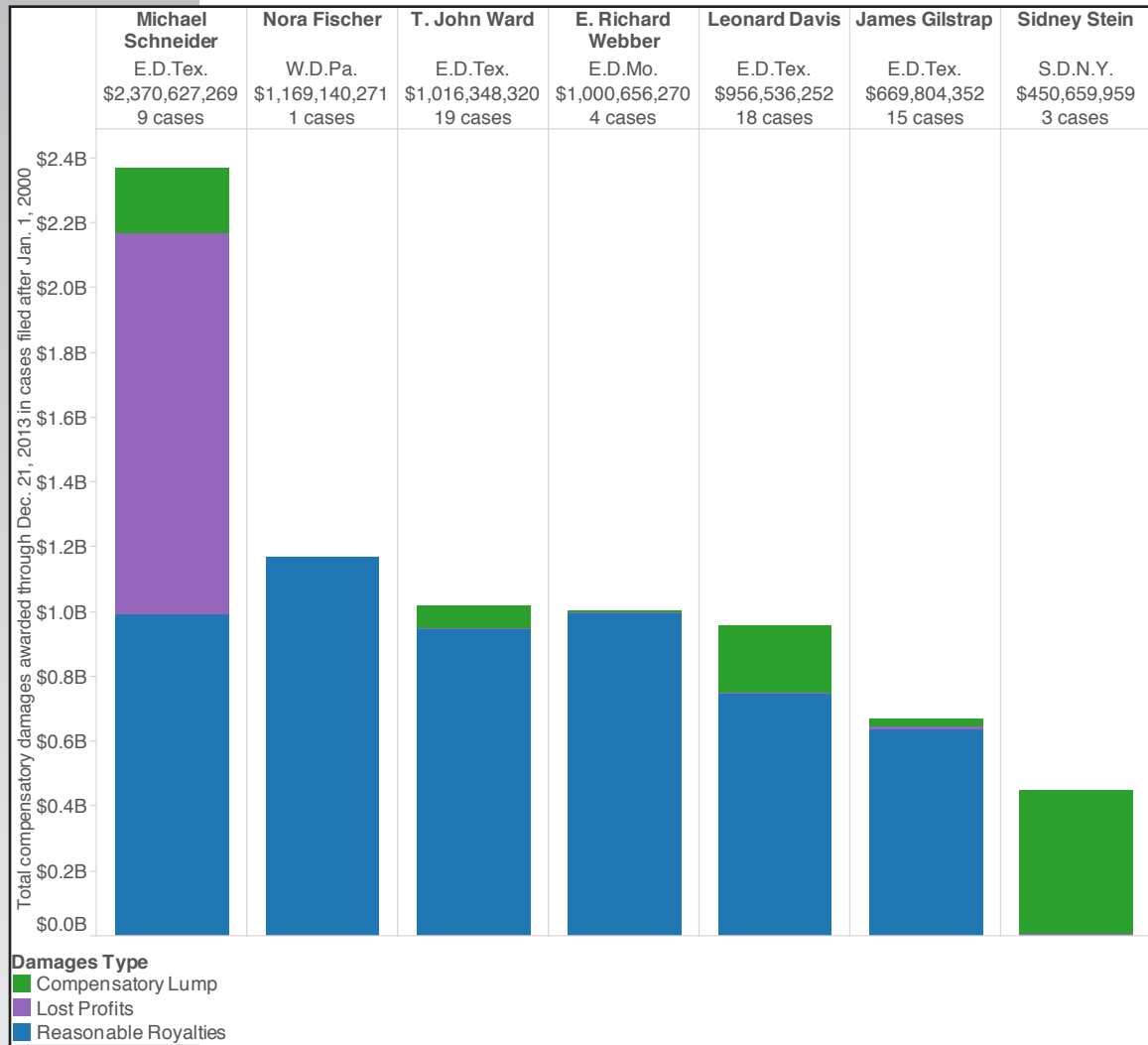
*Figure 36: Top Districts – Attorneys' Fees Medians*

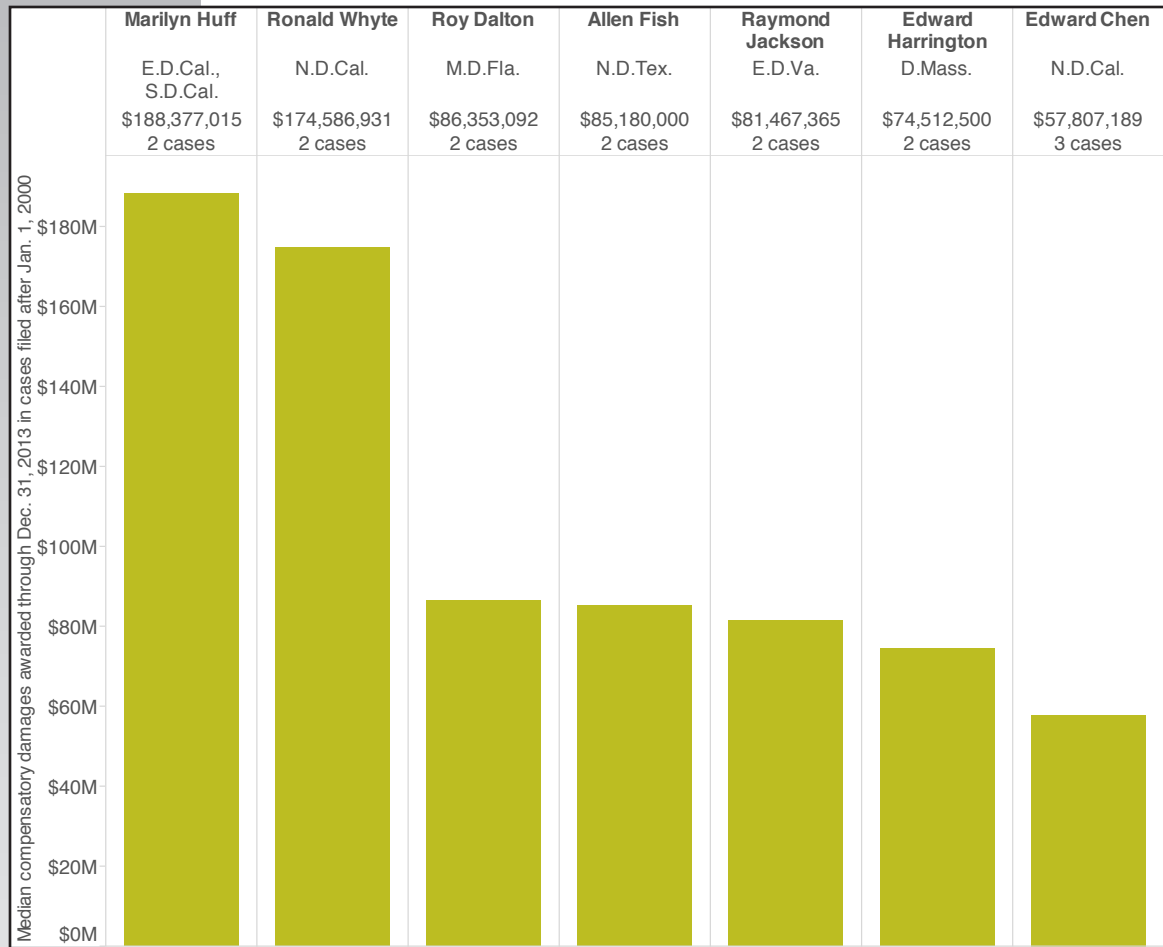
(showing districts with 2 or more cases)

## Judges

## Compensatory Damages

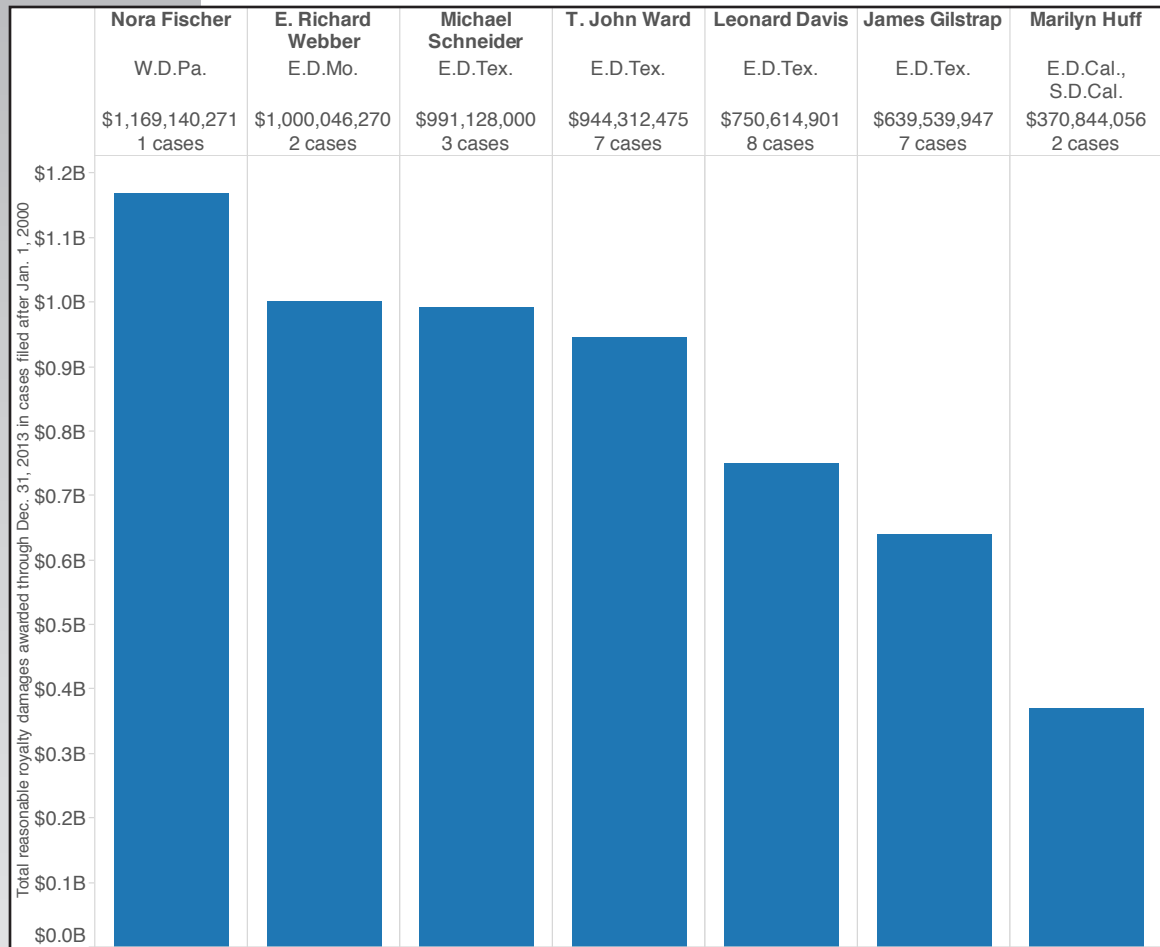
Figure 37: Top Judges - Compensatory Damages Totals

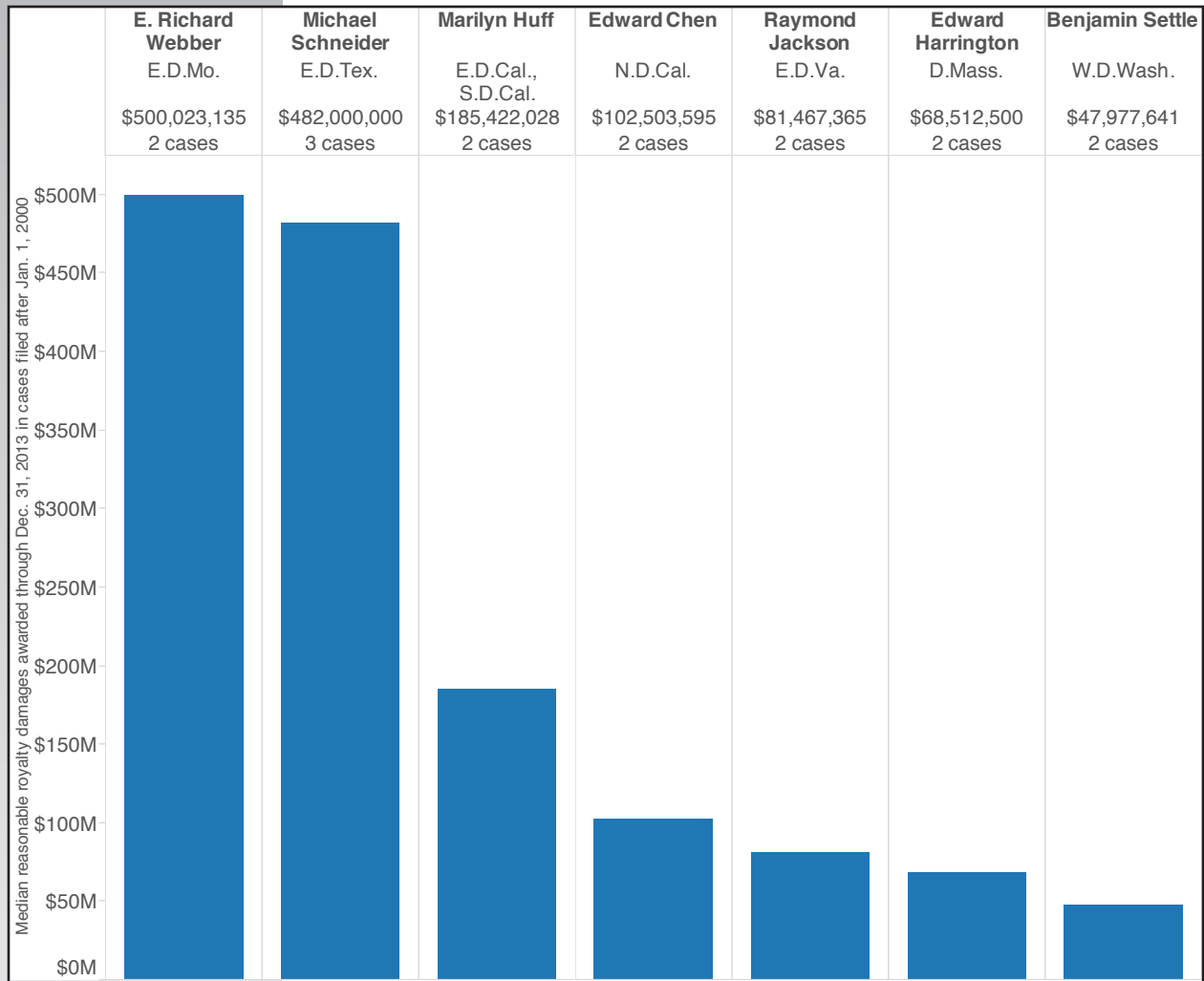


*Figure 38: Top Judges - Compensatory Damages Medians*

(showing judges with 2 or more cases)

## Reasonable Royalties Damages

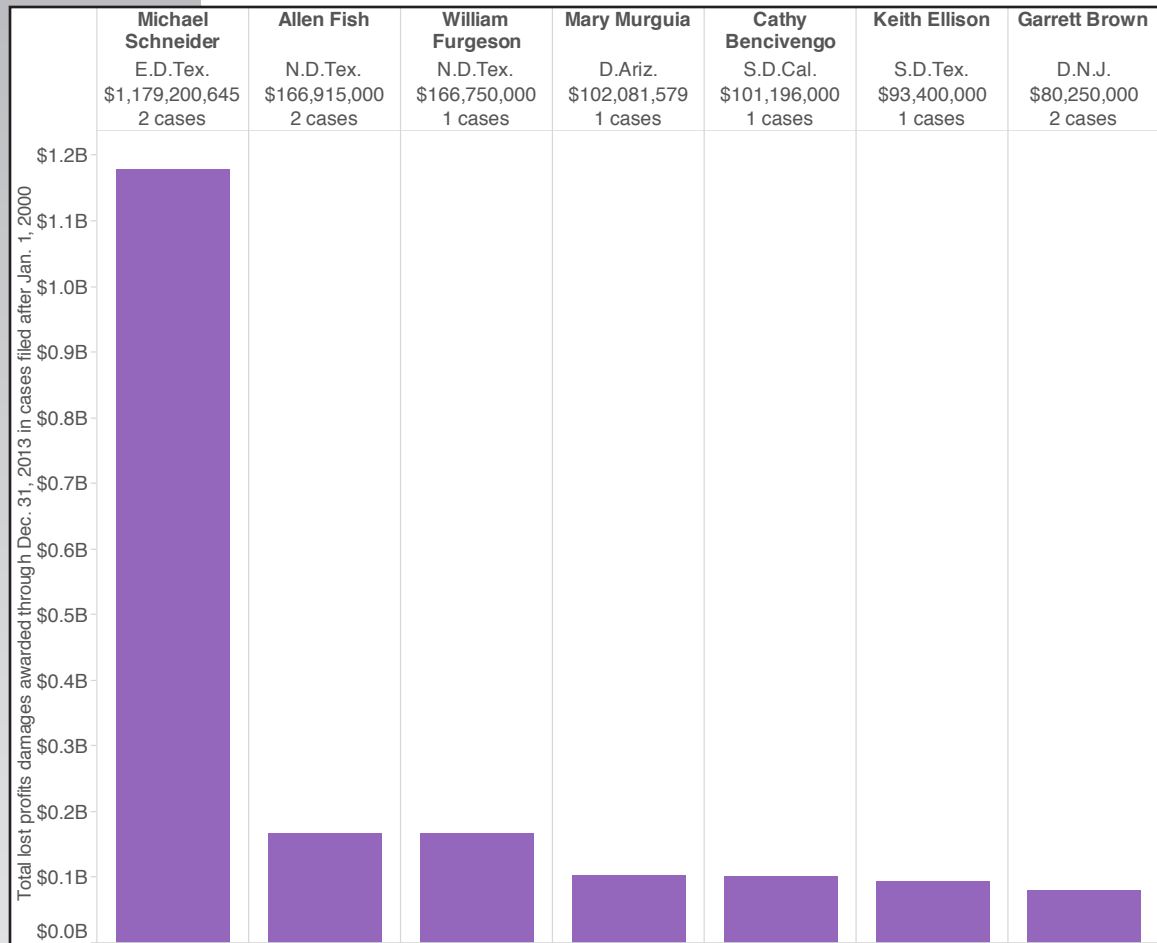
*Figure 39: Top Judges – Reasonable Royalties Damages Totals*

*Figure 40: Top Judges – Reasonable Royalties Damages Medians*

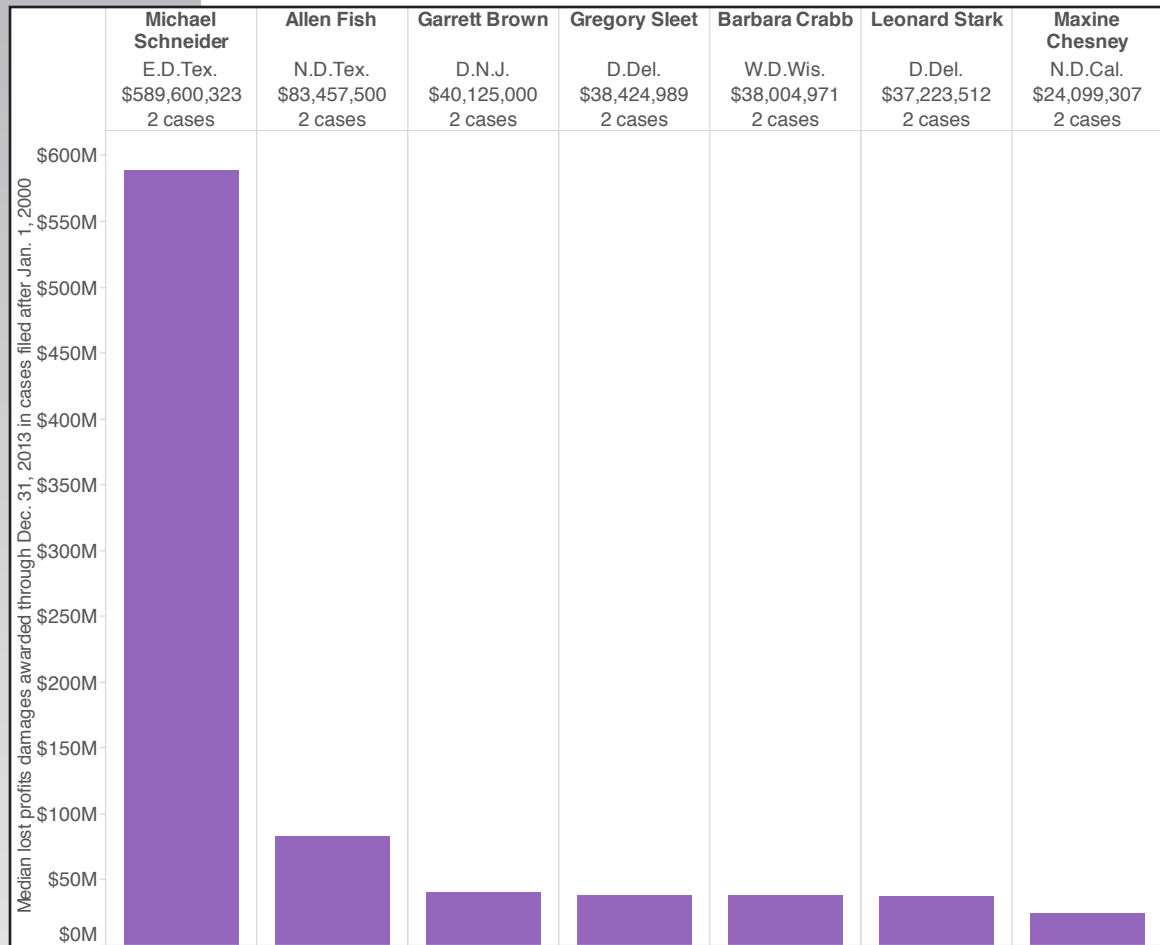
(showing judges with 2 or more cases)

## Lost Profits Damages

*Figure 41: Top Judges – Lost Profits Damages Totals*

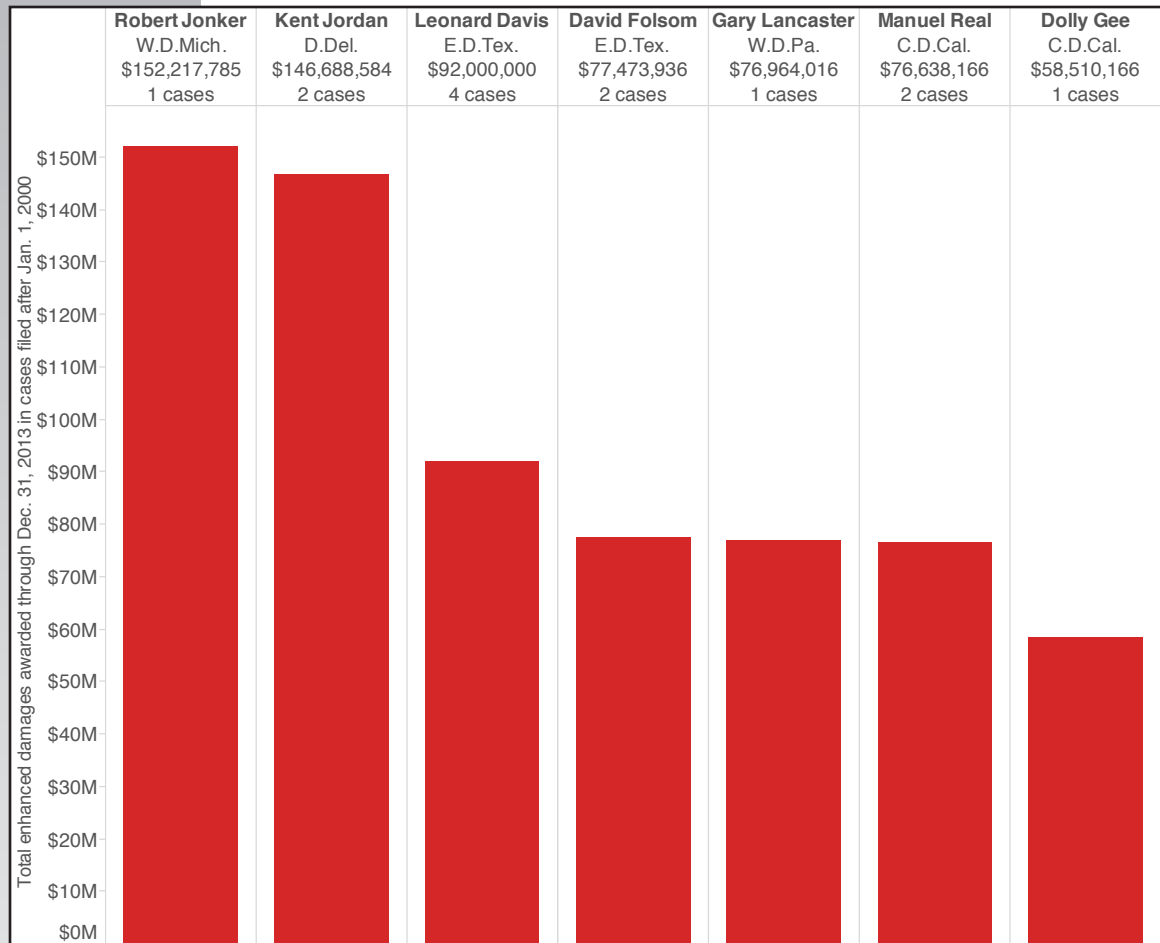


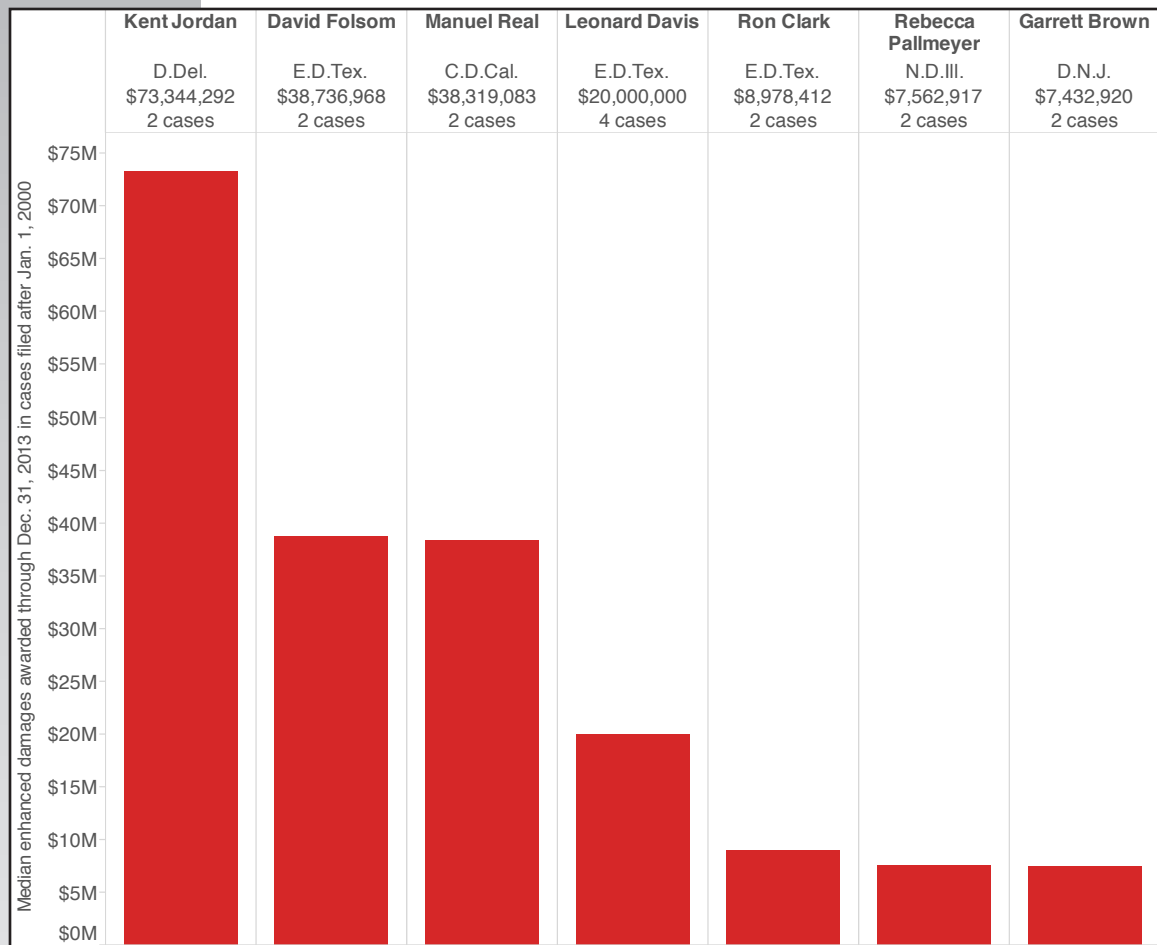


*Figure 42: Top Judges – Lost Profits Damages Medians*

(showing judges with 2 or more cases)

## Enhanced Damages

*Figure 43: Top Judges – Enhanced Damages Totals*

*Figure 44: Top Judges – Enhanced Damages Medians*

(showing judges with 2 or more cases)

## Attorneys' Fees

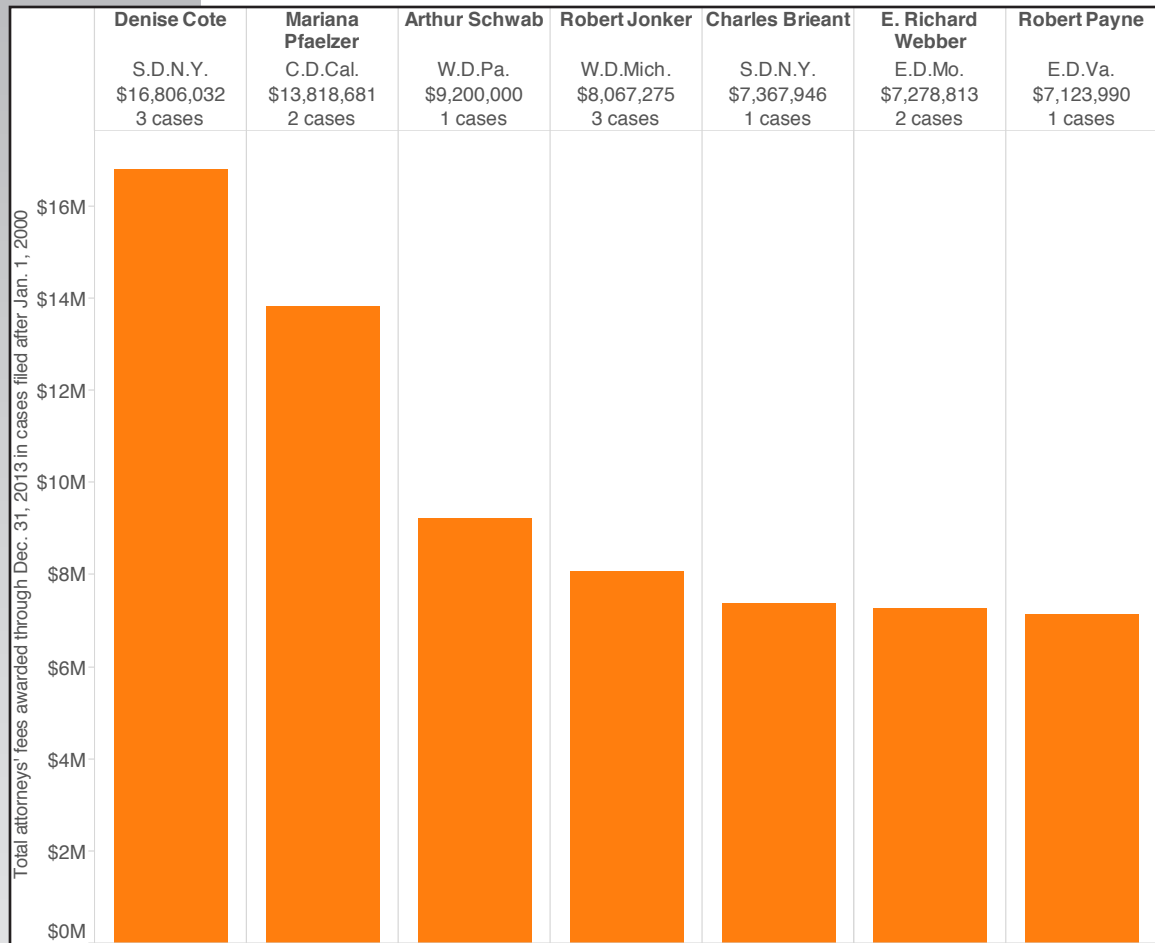
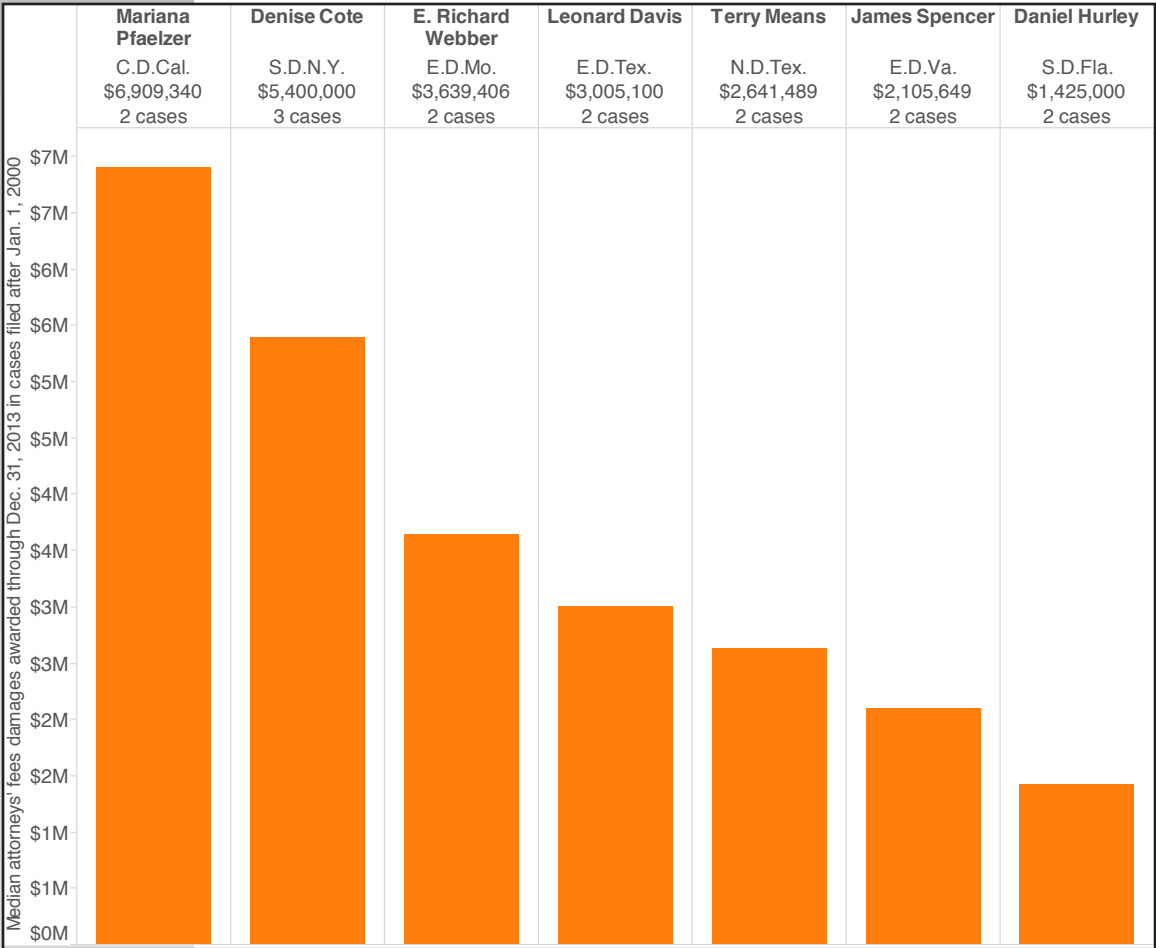
*Figure 45: Top Judges – Attorneys' Fees Totals*

Figure 46: Top Judges – Attorneys’ Fees Medians



(showing judges with 2 or more cases)

## Parties

*Figure 47: Top Parties – Compensatory Damages Won per Terminated Case*

	Party	Total Compensatory Damages Won	Total Terminated Cases (Won or Lost)	Compensatory Damages Won per Terminated Case
1	Centocor	\$1,672,594,000	6	\$278,765,667
2	New York University	\$1,672,594,000	8	\$209,074,250
3	VirnetX	\$473,910,000	5	\$94,782,000
4	Sanofi-Synthelabo	\$442,209,362	8	\$55,276,170
5	Versata Software	\$328,654,806	11	\$29,877,710
6	Warsaw Orthopedic	\$103,963,546	5	\$20,792,709
7	Rambus	\$349,035,842	17	\$20,531,520
8	Advanced Medical Optics	\$89,556,860	5	\$17,911,372
9	SynQor	\$112,019,855	8	\$14,002,482
10	Immersion	\$82,000,000	6	\$13,666,667

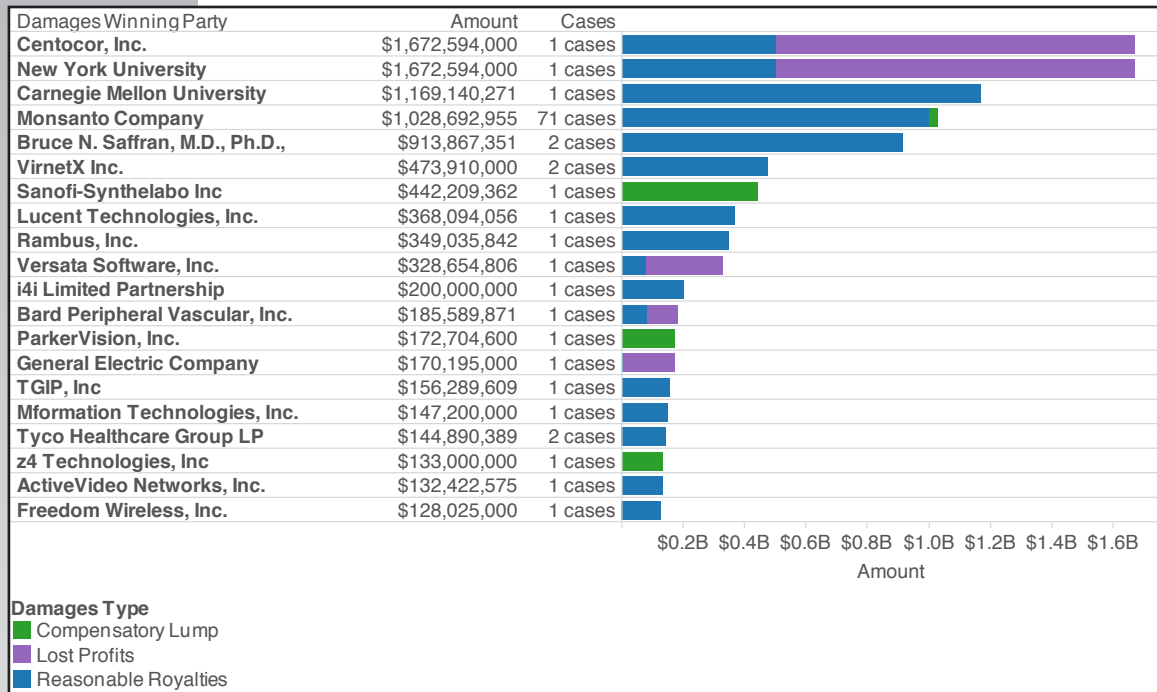
(showing parties with 5 or more terminated cases)

## Damages Won

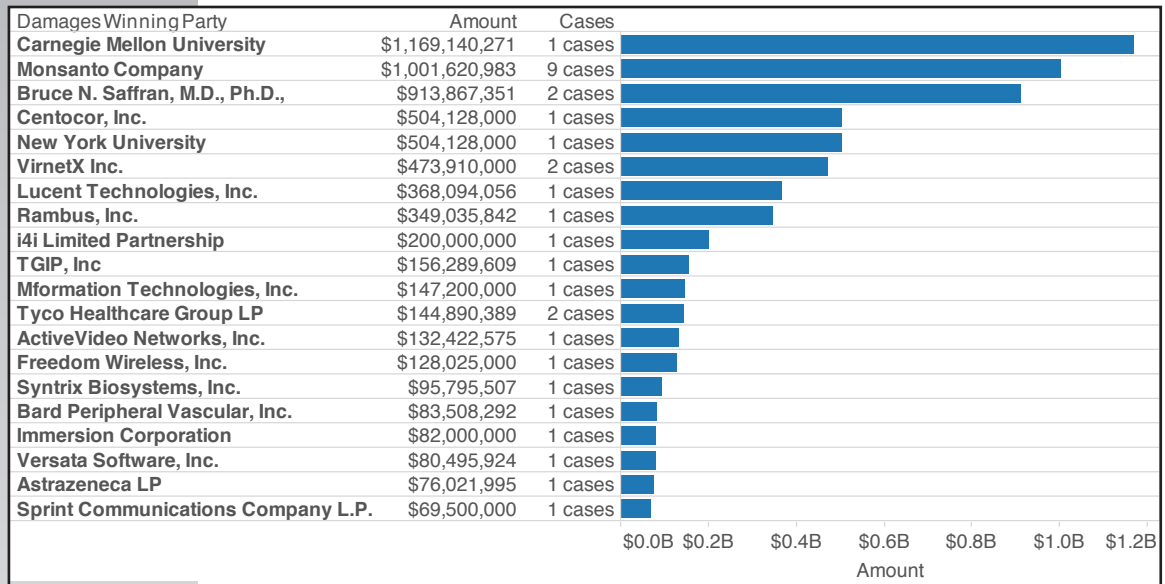
*Figure 48: Top Parties – Total Cases With Compensatory Damages Won*

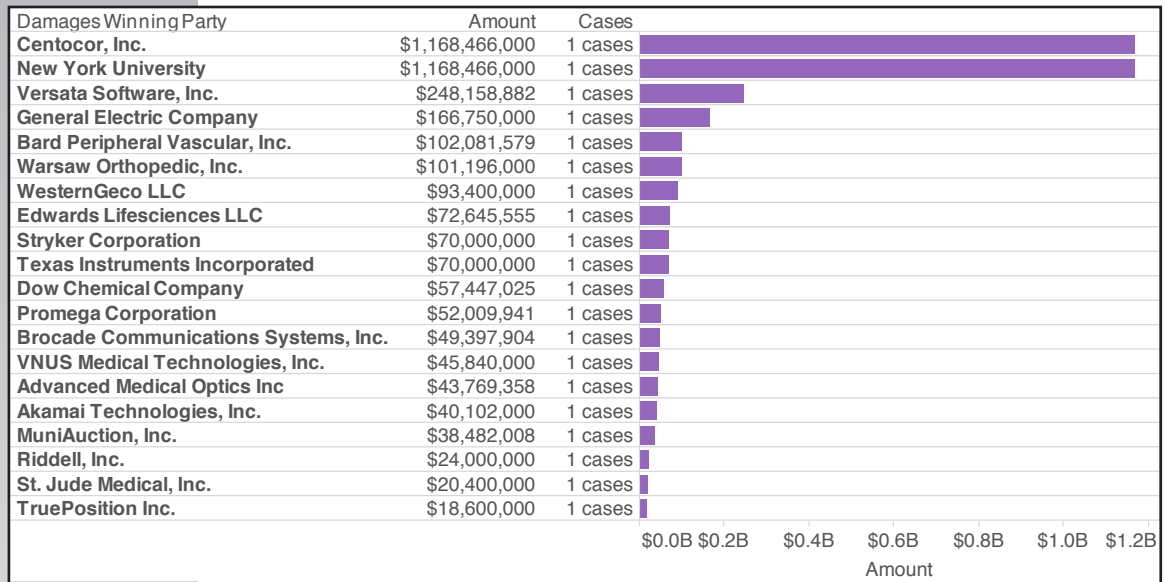
	Party	Cases	Total Damages	Median Damages
1	Monsanto	71	\$1,028,692,955	\$127,500
2	Ovadia	6	\$72,153	\$5,500
3	Philips	6	\$65,456,365	\$284,032
4	ArrivalStar	5	\$316,667	\$62,728
5	Directed Electronics	5	\$45,000	\$5,000
6	East-West Trading Corp	4	\$56,030	\$4,875
7	David Moscatello	3	\$98,316	\$37,500
8	Heeling Sports Limited	3	\$3,236,970	\$375,300
9	Metabolic Technologies	3	\$102,298	\$20,000
10	Mobile Hi-Tech Wheels	3	\$471,314	\$146,314
11	Oakley	3	\$11,060	\$2,774
12	Smith & Nephew	3	\$27,454,550	\$4,713,000
13	TriStrata	3	\$27,893,105	\$846,000

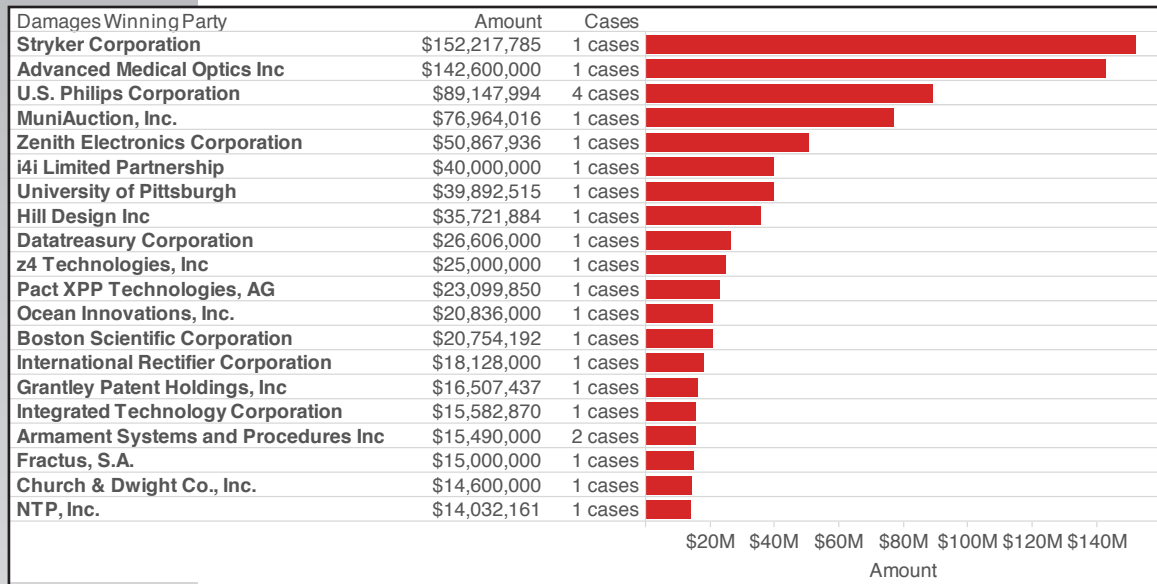
(showing parties with 3 or more cases)

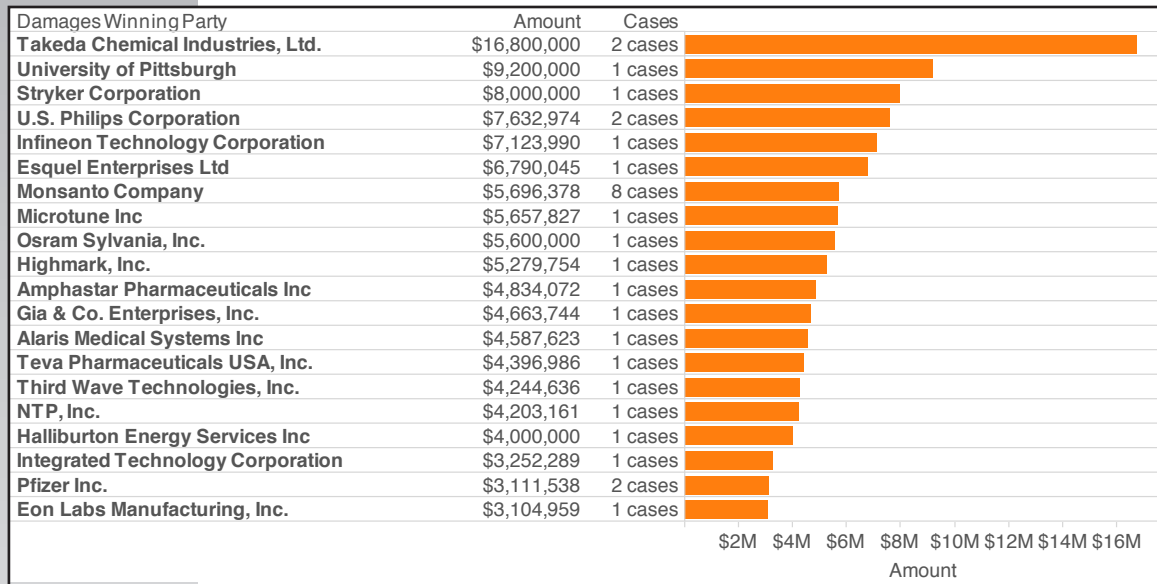
*Figure 49: Top Parties - Compensatory Damages Won*



*Figure 50: Top Parties - Reasonable Royalties Damages Won*

*Figure 51: Top Parties – Lost Profits Damages Won*

*Figure 52: Top Parties - Enhanced Damages Won*

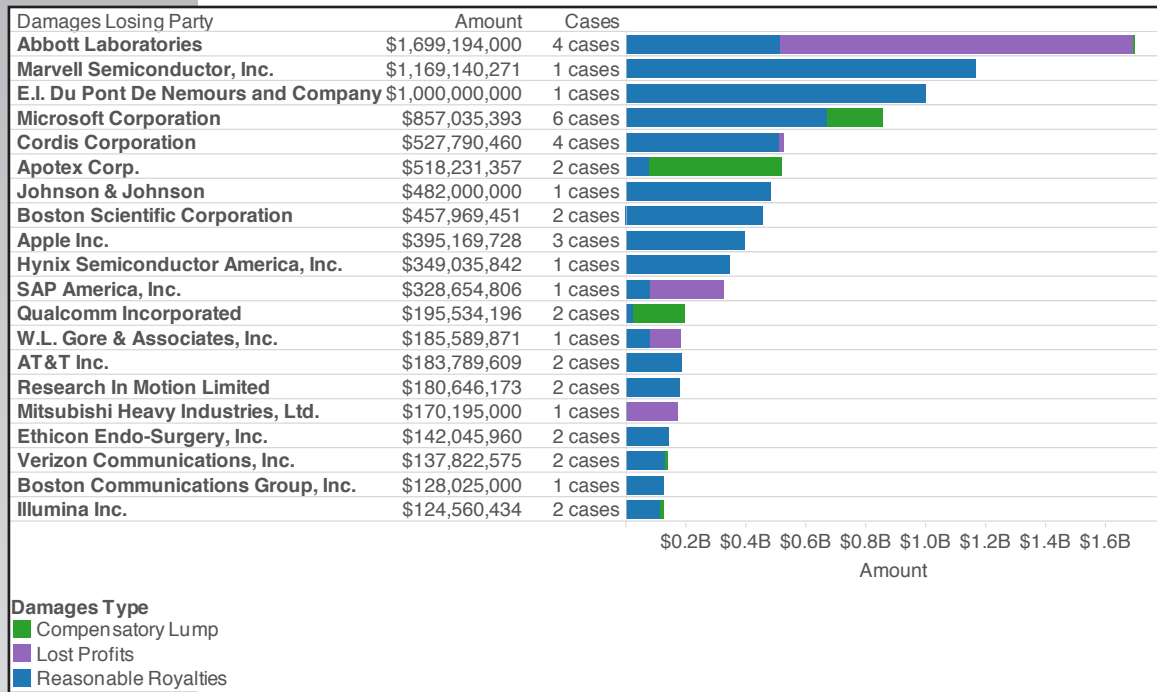
*Figure 53: Top Parties – Attorneys' Fees Won*

## Damages Lost

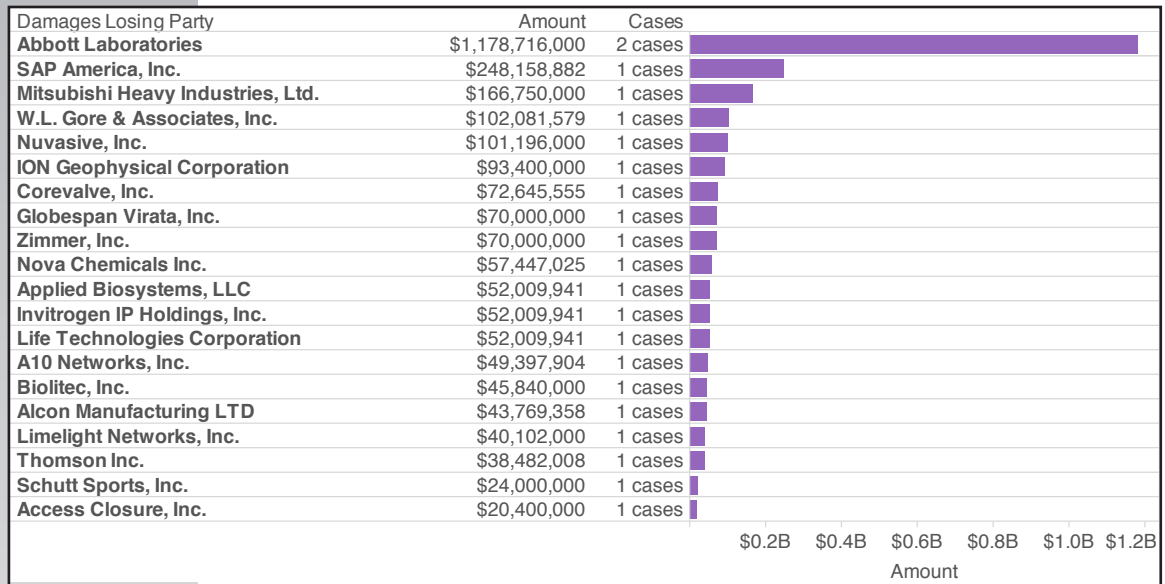
*Figure 54: Top Parties – Total Cases With Compensatory Damages Lost*

	Party	Cases	Total Damages	Median Damages
1	Microsoft	6	\$857,035,393	\$110,375,000
2	Abbott Laboratories	4	\$1,699,194,000	\$10,800,000
3	Cordis	4	\$527,790,460	\$20,967,417
4	Dell	4	\$7,871,000	\$1,210,000
5	Apple	3	\$395,169,728	\$19,009,728
6	Arthrex	3	\$52,454,550	\$18,741,550
7	Cisco	3	\$70,325,536	\$6,500,000
8	Hyundai	3	\$48,005,645	\$11,575,580

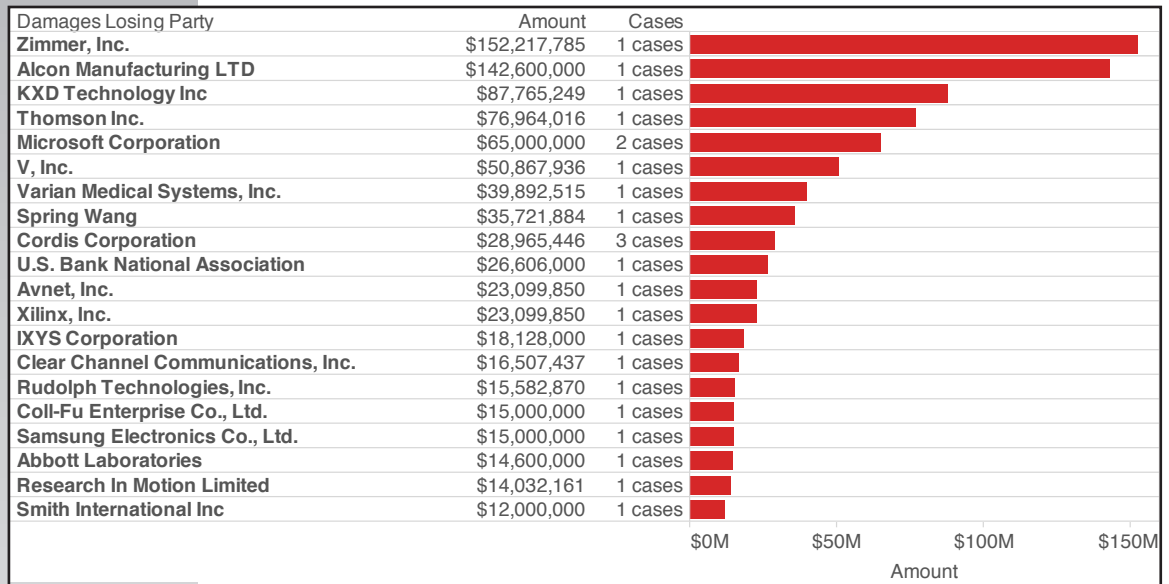
(showing parties with 3 or more cases)

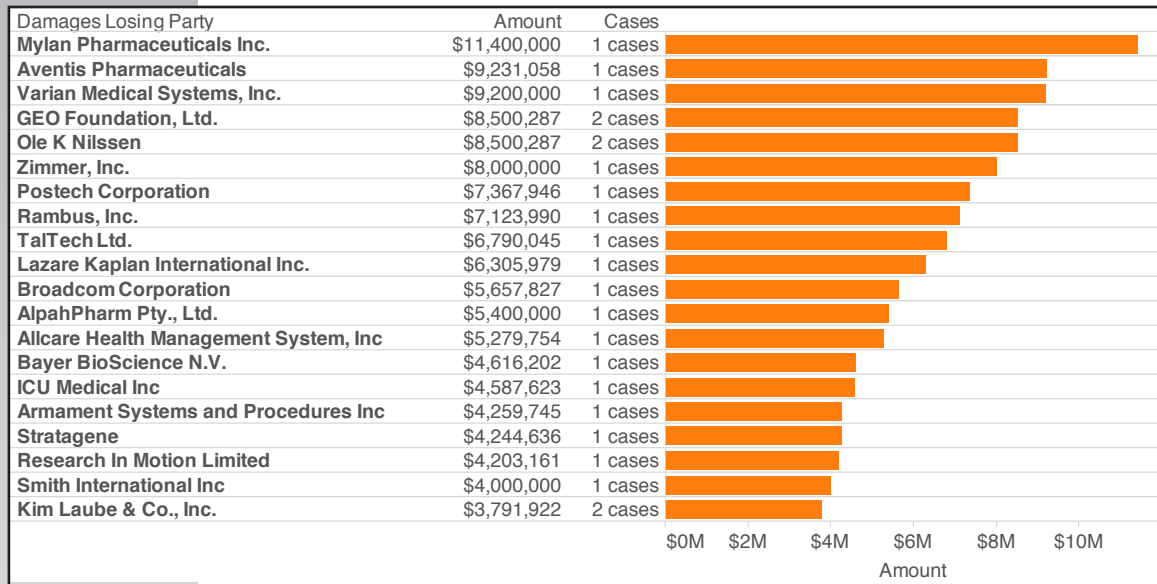
*Figure 55: Top Parties - Compensatory Damages Lost*

*Figure 56: Top Parties - Reasonable Royalties Damages Lost*

*Figure 57: Top Parties – Lost Profits Damages Lost*



*Figure 58: Top Parties – Enhanced Damages Lost*

*Figure 59: Top Parties – Attorneys' Fees Lost*

**Law Firms***Figure 60: Top Law Firms – Compensatory Damages Won per Terminated Case*

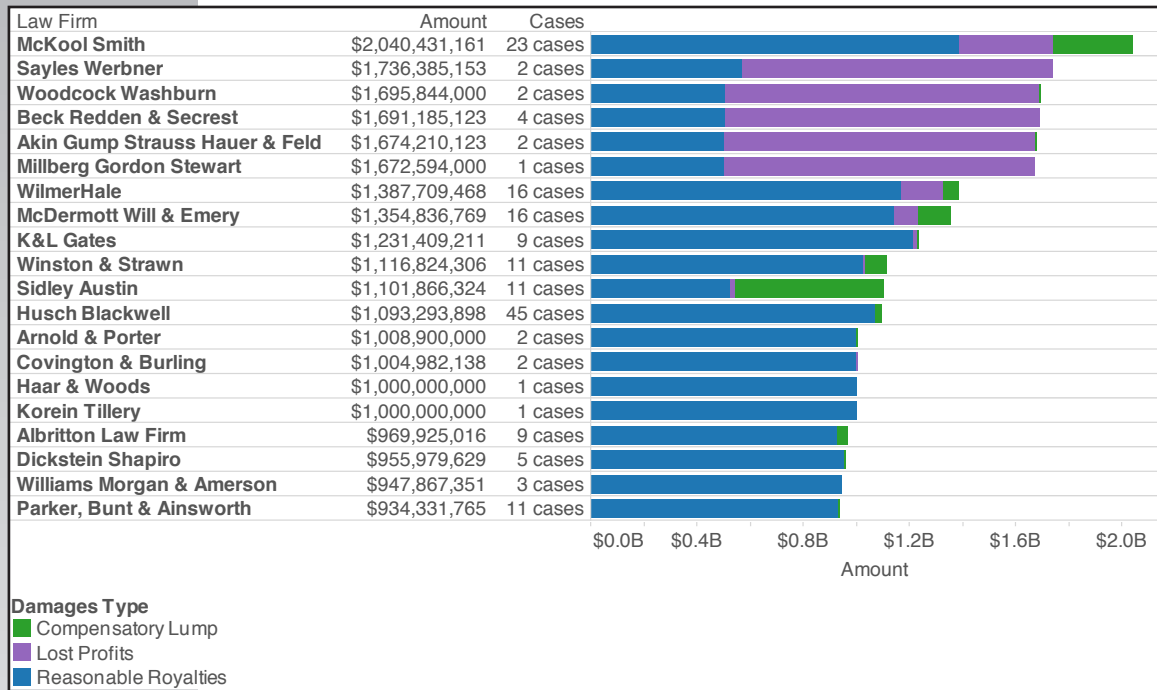
	Law Firm	Total Compensatory Damages Won	Total Terminated Cases (Won or Lost)	Compensatory Damages Won per Terminated Case
1	Caldwell Cassady & Curry	\$565,989,600	7	\$80,855,657
2	Stokes Roberts & Wagner	\$368,094,056	5	\$73,618,811
3	Haar & Woods	\$1,000,000,000	15	\$66,666,667
4	Sayles Werbner	\$1,736,385,153	45	\$38,586,337
5	Gammage & Burnham	\$185,589,871	6	\$30,931,645
6	Hahn & Adema	\$368,094,056	14	\$26,292,433
7	Coleman Law Firm	\$484,168,646	19	\$25,482,560
8	Bridges & Mavrakakis	\$368,094,056	15	\$24,539,604
9	Willi Law Firm	\$328,654,806	14	\$23,475,343
10	H. Craig Hall, Jr.	\$103,920,250	5	\$20,784,050

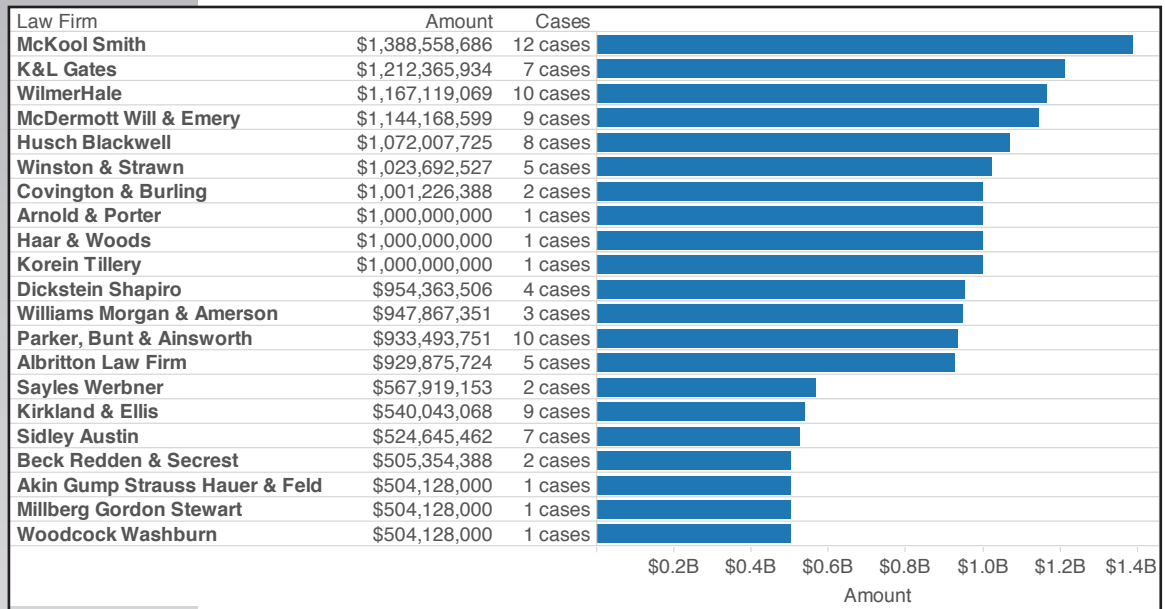
(showing law firms with 5 or more terminated cases)

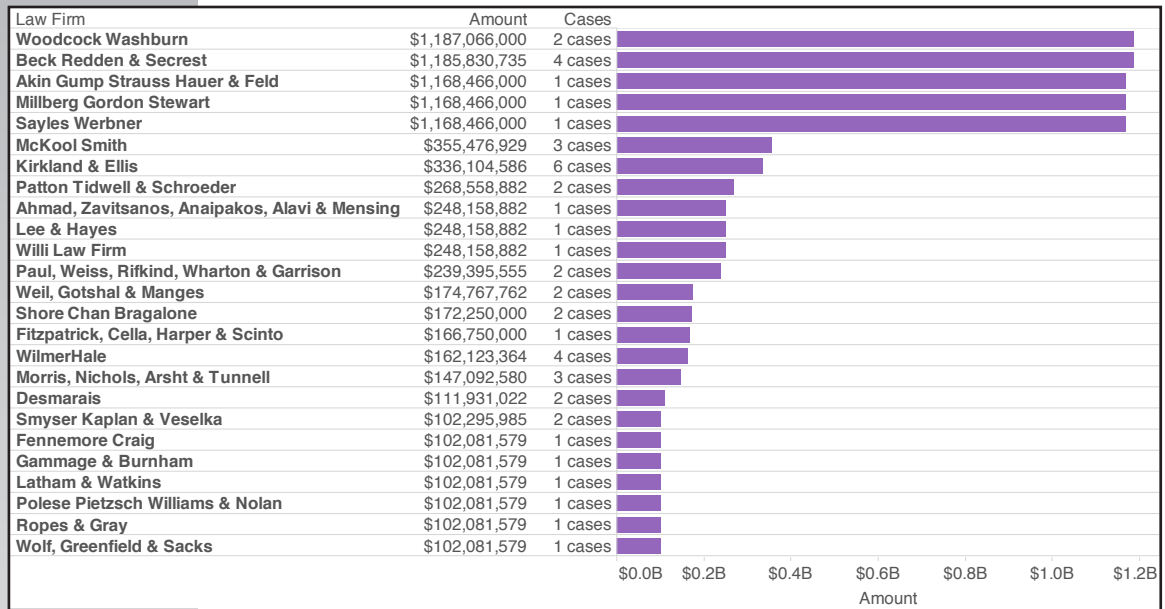
## Damages Won

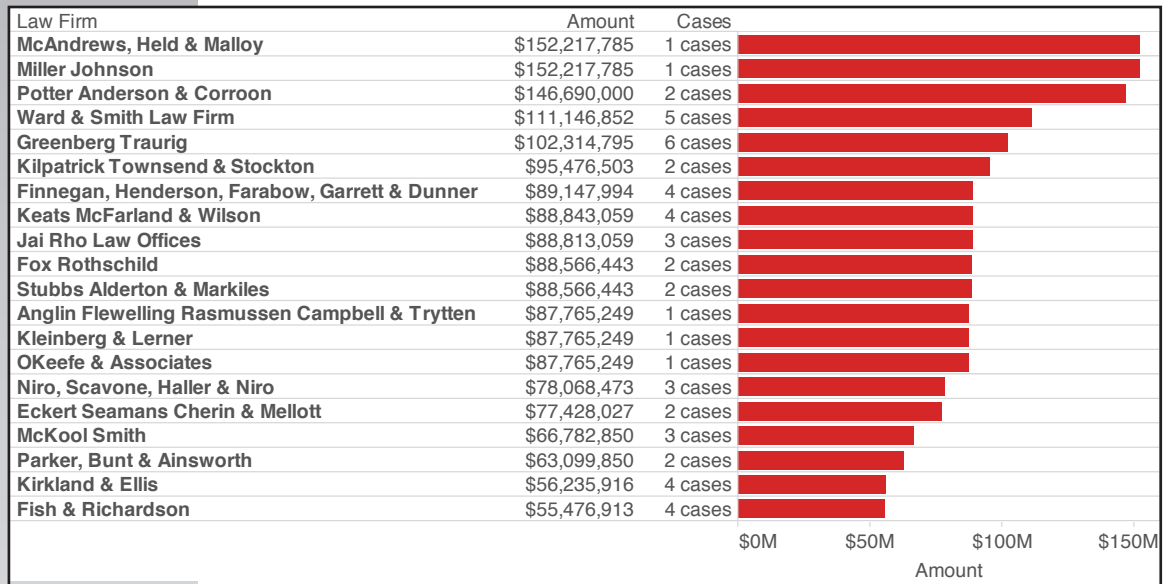
*Figure 61: Top Law Firms – Total Cases With Compensatory Damages Won*

	Firm	Cases	Total Damages	Median Damages
1	Husch Blackwell	45	\$1,093,023,898	\$183,639
2	Thompson Coburn	30	\$23,156,289	\$155,170
3	McKool Smith	23	\$2,040,431,161	\$19,090,000
4	Fish & Richardson	22	\$162,384,374	\$2,919,631
5	Frilot	19	\$11,145,564	\$200,000
6	Ireland, Carroll & Kelley	17	\$277,147,656	\$6,873,357
7	Kirkland & Ellis	17	\$909,213,258	\$15,399,900
8	McDermott Will & Emery	16	\$1,354,836,769	\$7,550,000
9	WilmerHale	16	\$1,387,709,468	\$16,157,784
10	Ward & Smith Law Firm	15	\$512,902,119	\$8,712,294

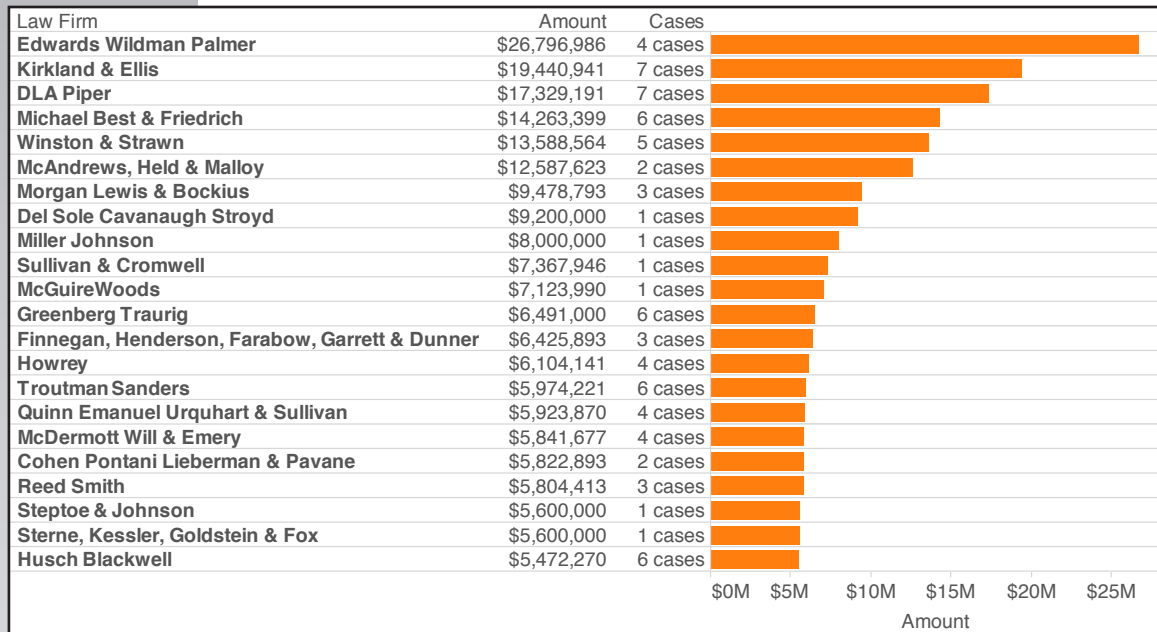
*Figure 62 Top Law Firms - Compensatory Damages Won*

*Figure 63: Top Law Firms - Reasonable Royalties Damages Won*

*Figure 64: Top Law Firms – Lost Profits Damages Won*

*Figure 65: Top Law Firms - Enhanced Damages Won*



*Figure 66 : Top Law Firms – Attorneys' Fees Won*

**Lex Machina's Data**

This report draws on data from Lex Machina's specialized intellectual property litigation database. Although most of our data is derived from litigation information publicly available from PACER (federal court system) or EDIS (the ITC system), Lex Machina applies additional layers of intelligence to bring consistency to, and ensure the completeness of, the data.

For example, this report analyzes trends in patent litigation. To determine whether a case is a patent case, others may blindly trust the Cause-of-Action (CoA) and Nature-of-Suit (NoS) codes entered in PACER. But Lex Machina actively analyzes complaints to ensure that patent cases filed under mistaken CoA/NoS codes (or a CoA/NoS code corresponding to a different claim, e.g. contract in a combined patent/contract case) are not missed. This same system also allows Lex Machina to filter out the many spurious cases that have no claim of patent infringement despite bearing a patent CoA/NoS code (e.g. false marking cases).

Moreover, due to inherent design limitations, PACER often shows inaccurate or corrupted information for older terminated cases. For example, when a lawyer leaves one firm for another, PACER may show closed cases that the lawyer worked on at his old firm as having been handled by his new firm. When combined with law firm splits, acquisitions, and mergers, these inaccuracies accumulate to render PACER data less reliable for older cases. Lex Machina, however, has a historic record going back to the first days of electronic filing on PACER (and other data going back even further).

These snapshots, unique to Lex Machina, give us access to normalized contemporary data and enable us to provide more accurate data for older cases than someone using PACER today.



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